

Maternity /Parental Leaves OSSTF District 20

2016

Pregnancy, Parental and Adoption Leave Guide

Introduction

This package of information is intended to assist you in preparing for pregnancy/parental leave by providing an overview of the rules and procedures that govern these leaves. The material has been organized according to topics to make it easier for you to find the specific information you may require. Please check with your Health and Benefits Officer at the District Office regarding any questions you may have.

Federal and Provincial legislation, the terms of our collective agreement and HDSB policies may have changed since this document was printed, so please make sure you verify the information prior to making any decisions. It is your responsibility to check with your OSSTF Health and Benefits Officer and with the HDSB to ensure that you have all the information you require. Updated legislation is also available through government websites.

Important Contact Information

OSSTF District 20 Office: (905 332 1228)

Jim Young (Chief Negotiator) youngj@osstfd20.ca

John Watson (Health and Benefits) watsonj@osstfd20.ca

Further Information -

Service Canada www.servicecanada.ca 1-800-O-Canada 1-800-622 6232

Ontario Teachers' Pension Plan www.otpp.on.ca (416) 226 2700

Ontario College of Teachers www.oct.on.ca (416) 961 8822

LTDI Long Term Disability www.otip.com 1 800 267 6847

1. Planning Ahead

You face some important decisions in the months ahead. As you plan for the future, take the time at each stage to:

Do your research and get the information you need to make the best decisions for you and your family.

Consider your options and look at the different financial, personal, and professional implications of each carefully.



Be aware of both your rights and responsibilities.

- ✓ If you are not ready, do not feel pressured to make a decision before it is required.
- ✓ Be aware of deadlines and ensure your paperwork is completed in time to receive what you are entitled to.
- ✓ Remember you do not have to apply for pregnancy, parental and extended parental leave all at once, but can take it one step at a time.
- ✓ Keep a complete home file of copies of all your documents and correspondence with the Board, including dates. You may need this verification later.

2. During Your Pregnancy

This is the time to do your research and prepare yourself for the decisions ahead. Although you do not have to make all your decisions right away, it is wise to think ahead and get a clear picture of both your immediate and long-term options.

Early in your pregnancy, get an overview of what is available to you. Find out about your rights and responsibilities by checking the following:

-Employment Standards Act

- Collective Agreements

- Employment Insurance Act

- Board Policies or protocols

Check into what you must do to maintain the following while on the different types of leave:

- ✓ Professional credentials with the College of Teachers. (If you are on leave during the month of January the member becomes responsible for the payment of fees)
- ✓ Pension contributions. (Purchasing credit during your leaves)
- ✓ Benefits protection, including health and dental coverage, long term disability insurance, and life insurance.
- ✓ Find out about your options for changing and/or increasing your benefits coverage in order to ensure your family is fully protected.

Legislation

The rights to pregnancy/parental leave are set out in the Provincial Employment Standards Act.

The conditions for receiving pregnancy/parental Employment Insurance benefits are under the Employment Insurance Act, which is federal legislation.

Please note there are some differences between these pieces of legislation in terms of eligibility and timelines.

Provincial Employment Standards Act, 2000 [ESA]



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Check website for current Pregnancy Leave and Parental Leave provisions (www.gov.on.ca/LAB/esa).

- Statutory pregnancy leave refers to the right to take a leave under provincial law and governs the minimum pregnancy and parental leave available to parents.
- You must have at least 13 weeks of continuous employment with the same school board to qualify for Pregnancy and Parental Leave benefits.
- Under ESA, a birth mother is entitled to take a pregnancy leave of 17 weeks or less, and up to 35 weeks subsequent parental leave.
- Birth fathers, adoptive parents and/or spouses, or others covered by the definition of parent under the legislation, are also entitled up to 37 weeks

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Parental leave:

This leave must begin no later than 52 weeks after the date their baby was born or the child first came into care.

- Parental leave may be taken by one or both parents and may be taken at the same time as the other parent or consecutively.

Pregnancy Leave - Employment Standards Act Legislation

Pregnant employees have the right to take pregnancy leave up to 17 weeks, or longer in certain circumstances which must be applied for as an unpaid leave.

Qualifying for Pregnancy Leave

A pregnant employee is entitled to pregnancy leave whether she is full-time, part-time, permanent or contract employee provided that she: works for an employer that is covered by the ESA, **and** was hired at least 13 weeks before the date her baby is *expected* to be born (the “due date”).

Note that an employee does not have to *actively* work the 13 weeks prior to the due date to be eligible for pregnancy leave. It is only necessary that she be hired at least 13 weeks before the baby is expected to be born.

A typical case

Aurélie was hired 15 weeks before her due date. She is eligible to begin her pregnancy leave at any time after being hired, because there are at least 13 weeks between the date she was hired and her due date.



When an employee is off sick

Fatima was hired 15 weeks before her due date. Soon after starting her new job, she was off sick for five weeks. Fatima is eligible for pregnancy leave because there are at least 13 weeks between the date she was hired and her due date. The fact that she did not actually work 13 weeks is irrelevant.

When a baby is born before the due date

Meredith was hired 15 weeks before her due date. However, 11 weeks after she was hired, her baby was born. Meredith is eligible for pregnancy leave *to begin on the date the baby was born*, because there were at least 13 weeks between the date she was hired and her due date. The fact that her baby was born less than 13 weeks after she was hired is irrelevant.

When a Pregnancy Leave Can Begin

Usually, the *earliest* a pregnancy leave can begin is 17 weeks before the employee's due date. However, when an employee has a *live* birth more than 17 weeks before the due date, she will be able to begin her pregnancy leave on the date of the birth.

Ordinarily, the *latest* a pregnancy leave can begin is on the baby's due date. However, if the baby is born earlier than the due date, the latest the leave can begin is the day the baby is born. Within these restrictions, an employee can start her pregnancy leave any time within the 17 weeks up to and including her due date. The employer cannot decide when the employee will begin her leave even if the employee is off sick or if her pregnancy limits the type of work she can do.

Miscarriages and Stillbirths

An employee who has a miscarriage or stillbirth *more than 17 weeks before her due date* is not entitled to a pregnancy leave.

However, if an employee has a miscarriage or stillbirth *within the 17- week period preceding the due date*, she is eligible for pregnancy leave. The latest date for commencing the leave in that case is the date of the miscarriage or stillbirth.

The pregnancy leave of an employee who has a miscarriage or stillbirth ends on the date that is the *later* of:

- 17 weeks after the leave began;
- or**
- 6 weeks after the stillbirth or miscarriage.

This means that the pregnancy leave of an employee who has a stillbirth or miscarriage will be at least 17 weeks long. In some cases it may be longer.



When an employee has a stillbirth

Wai began her pregnancy leave 15 weeks before her baby was due. On her due date she had a stillbirth. The ESA provides that the pregnancy leave ends on the date that is the later of 17 weeks after the leave began or six weeks after the stillbirth.

In this case, the later date is six weeks after the stillbirth. Wai can stay off work for up to six more weeks after the stillbirth, for a total of 21 weeks of pregnancy leave. Your Guide to the Employment Standards Act 56

When an employee has a miscarriage

Hélène began her pregnancy leave 15 weeks before her baby was due. One week later (one week into her pregnancy leave) she had a miscarriage. The law says that her pregnancy leave ends on the date that is the later of either 17 weeks after the leave began or six weeks after the miscarriage.

In Hélène's case, the later date is 17 weeks after the leave began. She will get a total of 17 weeks of pregnancy leave.

Notice Requirements for Pregnancy Leave

Giving Notice about Starting a Pregnancy Leave

An employee must give her employer at least two weeks *written notice* before beginning her pregnancy leave. Also, if the employer requests it, she must provide a certificate from a medical practitioner stating the baby's due date.

Retroactive Notice

Sometimes an employee has to stop working earlier than expected because of complications caused by the pregnancy. In that case, the employee has two weeks after she stops working to give the employer *written notice* of the day the pregnancy leave began or will begin.

An employee does not have to start her pregnancy leave at the time she stops working if she has stopped work due to illness or complications related to the pregnancy. She may choose instead to treat the time off as sick time and plan to commence the pregnancy leave later (but no later than the earlier of the birth date or due date

If an employee stops working earlier than expected because of a birth, stillbirth or miscarriage, she has two weeks after she stops working to give the employer *written notice* of the day the leave began. The pregnancy leave begins no later than the date of the birth, stillbirth or miscarriage. If the employer requests it, the employee has to provide a medical certificate stating the due date and the date of birth, stillbirth or miscarriage.



Changing the Date a Pregnancy Leave Starts

Suppose an employee has given notice to begin a pregnancy leave. She can begin the leave *earlier* than she originally told her employer if she gives her employer new *written notice* at least two weeks before the *new, earlier date*.

Failing to Give Notice

An employee who fails to give the required notice *does not* lose her right to a pregnancy leave. She may fail to give notice because she did not know she had to, or because she was unable to under the circumstances.

Giving Notice About Ending a Pregnancy Leave

An employee can tell her employer when she will be returning to work, but she is not required to do so. If the employee does not specify a return date, the employer is to assume that she will take her full 17 weeks of leave (or any longer period that she may be entitled to).

An employer cannot require an employee to return from her leave early. Also, an employer cannot require an employee to prove, through medical documentation, that she is fit to return to work. The decision to return to work is the employee's.

Changing the Date a Pregnancy Leave Ends

An employee may want to change the date her leave was scheduled to end to an *earlier* date. If so, she must give the employer a *new* written notice of at least four weeks before the *new, earlier day*.

An employee may want to change the date her leave was scheduled to end to a *later* date. In this case, she must give the employer a *new* written notice at least four weeks before the date the leave was *originally* going to end. Unless the employer agrees, she cannot schedule a new end date to her pregnancy leave that would result in her taking a longer leave than she is entitled to under the ESA.

When an Employee Decides Not to Return to Work

Suppose an employee wants to resign before the end of her pregnancy leave, or at the end of the leave. She must give her employer at least four weeks' written notice of her resignation.

Federal Employment Insurance Legislation

Check website for updated information on Maternity, Parental and Sickness benefits at www.hrdc-drhc.gc.ca/ae-ei/pubs/special_e.html



Service Canada Centres

Burlington Resources Centre

440 Elizabeth Street
Burlington, Ontario

Oakville

Trafalgar Village Mall
North side of Cross, west of Trafalgar Rd.
Oakville Centre: 1-800-959-9522

Milton Service Canada Centre

Trafalgar Square
310 Main Street East
Milton, Ontario

Collective Agreement

General Provisions

The clauses governing pregnancy adoption, parental and extended parental leaves are found in Section 16.00.00. Collective Agreement, please review carefully.

The following summary is for general information only and is in no way intended to replace the clauses of the Collective Agreement.

- The Board shall upon written request and a receipt from a qualified medical practitioner stating that the member is pregnant and an estimated date of delivery grant to the member a pregnancy leave.
- Actual teaching experience shall be granted for a leave under clause 16.01.00, 16.02.00 and 16.04.00
- Pregnancy leave shall be governed by the Employment Standards Act (17 week Pregnancy Leave and 35 week Parental Leave)
- Upon termination of the leave the member shall report in writing to the Principal the member's readiness and medical fitness to return to resume duties

EI top-up

- 100% top-up for the two week waiting period
- Plus an additional six week period after the birth of a child
- Top-up will be 100% of regular salary during waiting period and the difference between EI payment and member's regular salary for the following six weeks
- The member must submit to Human Resources proof of receipt of income from EI for the top-up to occur
- This can be divided into two components if necessary – two week waiting period and the six week top-up benefit

