

Pregnancy & Parental Leave

Lambton Kent Teacher Local
November 22, 2010

Sharon O'Halloran
Protective Services



LEGISLATION AND CASE LAW GOVERNING PREGNANCY AND PARENTAL LEAVE

- *Employment Standards Act (E.S.A.)*
- *Employment Insurance Act (E.I.A.)*
- Ontario Human Rights Code
- Arbitration Decisions

LEAVE ENTITLEMENTS FOR THE BIRTH MOTHER

How much time will I have away from work?

The *Employment Standards Act* defines the leave period as:

Pregnancy Leave

- 17 weeks pregnancy
- may begin 17 weeks before expected delivery date

Parental Leave

- 35 weeks parental leave
- to begin when the pregnancy leave ends

LEAVE ENTITLEMENTS FOR THE BIRTH FATHER OR PARTNER OF BIRTH MOTHER

The *Employment Standards Act* defines the leave period as:

Parental Leave

- 37 weeks to begin no later than 52 weeks after the child is born or comes into custody, care and control for the first time.

LEAVE ENTITLEMENTS FOR ADOPTING PARENTS OR PARENTS THROUGH SURROGACY

The *Employment Standards Act* defines the leave period as:

Parental Leave

- 37 weeks to begin no later than 52 weeks after the child is born or comes into custody, care and control for the first time.

In order to qualify for a pregnancy and/or parental leave you must have at least 13 weeks employment with the school board before the expected date of birth.

NOTICE REQUIREMENTS

How much notice must I provide?

The *Employment Standards Act* outlines minimum notice in the following manner:

Notice to Begin a Leave

For pregnancy leave:

- minimum of 2 weeks written notice
- certificate from medical practitioner
- Notice waived if complications arise

NOTICE REQUIREMENTS

For parental leave:

- 2 weeks written notice
- notice waived if child arrives early

EMPLOYMENT STANDARDS ACT (E.S.A.) **NOTICE REQUIREMENTS**

Notice to Change a Leave Period

To change the date for beginning a pregnancy or parental leave:

- To an earlier or later date, at least 2 weeks written notice

To change the date for ending a pregnancy or parental leave:

- 4 weeks written notice

Please refer to your collective agreement to determine if the notification period has been modified.

EMPLOYMENT STANDARDS ACT (E.S.A.) **ENTITLEMENTS**

What are my protections and entitlements while on leave?

The *Employment Standards Act* in Ontario provides the following additional entitlements:

Benefits Plans

- The right to continue to participate in benefit plans including pension, life insurance, extended health, LTD, etc.

PENSION PLAN CONTRIBUTIONS

What happens if you waive the right to contribute?

- The amount of your pension will be less. Less credit means a lower pension, unless you teach an extra year later on.
- It may postpone the date you can retire with an unreduced pension.
- It will cost more to purchase the credit later.

AMENDMENTS TO PENSION RULES FOR LEAVES

Effective September 1, 2010, several plan enhancements have been introduced to make it easier for members to buy back leaves of absence.

The enhancements are as follows:

1. Members are no longer required to make one LUMP SUM buyback payment after a leave expires. Members may buy back the leave over a five year period by paying what they wish, when they wish.
2. Interest will start to be charged only at the end of the leave. Members will not be charged interest as long as they are still on the leave. Interest will start to accumulate on the unpaid portion of the buyback as soon as the leave ends.

3. The Ontario Teachers' Pension Plan (OTPP) will administer pregnancy and parental leaves. Effective September 1, 2010, when a member commences a pregnancy or parental leave, the school board will notify OTPP so that OTPP can administer the appropriate paperwork regarding buy back options.
4. Buyback costs for leaves that span multiple years will be calculated on the salary received at the time of the leave as a base and then OTPP will apply a standard salary adjustment for each school year.
5. Members working part-time may buy back leaves of absence and receive a full year of qualifying credit starting with the 2010/2011 school year.

EMPLOYMENT STANDARDS ACT (E.S.A.) **ENTITLEMENTS**

Length of Employment

- The right to continue to accrue seniority and service.

EMPLOYMENT STANDARDS ACT (E.S.A.) **ENTITLEMENTS**

Right to Reinstatement

- The right to be reinstated to your position if the position still exists.

Please refer to your collective agreement for additional language on the right to reinstatement.

EMPLOYMENT STANDARDS ACT (E.S.A.) **ENTITLEMENTS**

Right to be free from discipline

- The Act prohibits the employer from disciplining or discriminating against an employee who is on a leave or may be preparing to go on a leave.

EMPLOYMENT INSURANCE (E.I.) BENEFITS

In order to qualify for benefits, the *Employment Insurance Act* requires:

- 600 hours of insurable employment in the 52-week period preceding claim.

You may be at risk of not meeting the 600 hour requirement if:

- you only recently started to work;
- you are working less than 0.5;
- you recently returned from an unpaid leave or deferred salary leave; or
- you recently returned from a pregnancy or parental leave.

EMPLOYMENT INSURANCE (E.I.) BENEFITS

When does my E.I. claim begin?

- Up to 8 weeks before child is born (pregnancy claim).
- No later than 52 weeks after the baby is born or comes into your care (parental claim).

How much money will I receive?

You will receive 55% of weekly insurable earnings to a maximum of \$447.00 per week before taxes.

HOW DO I APPLY?

- Record of Employment (completed by Board personnel)
- On-line application @ www.servicecanada.gc.ca

COLLECTIVE AGREEMENT ENTITLEMENTS

What other entitlements are available during my leave?

ARTICLE 17 PREGNANCY/PARENTAL LEAVE

17.01 A Member may request and the Board shall grant Pregnancy and/or Parental Leave as provided for by the current *Employment Standards Act*.

Extended Pregnancy/Parental Leave

17.02.1 A Member may request and the Board shall grant an Extended Pregnancy/Parental Leave provided that such leave is applied for six (6) weeks prior to the projected date of commencement of the leave, and provided that the extended leave period terminates immediately prior to the beginning of a school term.

COLLECTIVE AGREEMENT ENTITLEMENTS

- 17.02.2 For the purpose of this clause, the school year shall consist of three (3) terms, and the maximum leave shall be two (2) years.
- 17.02.3 The Member who takes an Extended Pregnancy/ Parental Leave under this clause shall be granted benefits in accordance with Article 14 with the Board continuing to pay its share of premium costs for a period of twelve (12) months.
- 17.02.4 The Member is required to stipulate the date on which they will resume duties on the Request for Leave of Absence Form. A change to the return to duty date can be mutually agreed between the Board and the Member.

COLLECTIVE AGREEMENT ENTITLEMENTS

17.02.5 Upon return to duty, the Member shall:

17.02.5.1 Return to the same position at the same level of responsibility and at the same school as that from which leave was taken, if such position is available;

17.02.5.2 Return to a comparable position at the same level of responsibility at the same school if the Member's position no longer exists subject to the Board's Transfer Policy and Regulations;

17.02.5.3 Retain all rights and benefits; and

COLLECTIVE AGREEMENT ENTITLEMENTS

17.02.5.4 Be placed on the Basic Salary Grid according to years of teaching experience and certification.

Adoption Leave

17.03 All entitlements under Pregnancy/Parental Leave shall apply to adoption leave. Such leave refers to the coming of a child into custody, care and control of the parent for the first time. A Member whose child comes into their custody, care, and control sooner than expected, may commence leave immediately.

COLLECTIVE AGREEMENT ENTITLEMENTS

Benefits During Pregnancy/Parental Leave

- 17.04.1 For the duration of the statutory Pregnancy/Parental Leave in accordance with the current *Employment Standards Act*, the Board will continue the Member's benefits at the Board's rate of premium subsidization.
- 17.04.2 Members on Extended Parental Leave may continue their benefit plans beyond twelve months by paying 100% of the benefit costs on a monthly basis.

COLLECTIVE AGREEMENT ENTITLEMENTS

Supplementary Employment Benefit (SEB)

- 17.04.3.1 The Board shall provide for Members on Pregnancy, Parental or Adoption Leave a Supplementary Employment Insurance Plan.

- 17.04.3.2 The Plan will pay 100% of the Member's normal weekly earnings during the mandatory two (2) week waiting period for employment insurance pregnancy and adoption benefits.

COLLECTIVE AGREEMENT ENTITLEMENTS

17.04.3.3 For the six (6) week period immediately following the birth of her child, upon receipt of proof that the Member has applied for and is in receipt of Employment Insurance parental benefits, the Board shall pay top-up benefits as a supplement to the Member's Employment Insurance pregnancy benefit entitlement, without the requirement to submit medical proof of illness, for that portion of the six (6) week period which occurs during the instructional year. The amount of the supplement shall be equal to the difference between the amount of the Member's Employment Insurance pregnancy benefits, (which is acknowledged to be zero during the Member's two week waiting period if it occurs during this period) and one hundred percent (100%) of the Member's regular weekly earnings. This will apply only during instructional days. No sick time shall be deducted from the Member's sick leave account in Article 15.

COLLECTIVE AGREEMENT ENTITLEMENTS

Pregnancy Related Illness

- 17.04.4 A Member who suffers a pregnancy related illness or disability shall be entitled to use paid sick leave during the period of illness or disability, and will not be required to use pregnancy or parental leave or Supplementary Employment benefits unless she so elects. Appropriate medical documentation may be required (Article 15.06).
- 17.04.5 The right to elect to use paid sick leave shall apply regardless of whether or not the Member has already applied for a pregnancy or parental leave.

COLLECTIVE AGREEMENT ENTITLEMENTS

Hospitalization of Newborn

- 17.04.6 A Member who has recovered from delivery but whose child is hospitalized may interrupt her pregnancy leave by returning to work without the loss of her right to resume the leave.

Early Return

- 17.04.7 A Member may terminate a pregnancy leave or parental leave and return to work upon providing the Board with two (2) weeks written notice.

COLLECTIVE AGREEMENT ENTITLEMENTS

Article 18 Child Care Leave

- 18.01 Upon request, a Member shall be given an unpaid child care leave for up to two (2) years.
- 18.02 The Member will be allowed to continue in the benefits plan under Article 14 at full cost to the Member.
- 18.03 A Member shall continue to accrue seniority during a child care leave to a maximum of two (2) years.

COLLECTIVE AGREEMENT ENTITLEMENTS

- 18.04.1 When a leave, or a combination of leaves, has been extended beyond two (2) years, that Member's position shall be deemed vacant.

- 18.04.2 Members will be re-appointed upon return, to a similar position for which they are qualified.

SICK LEAVE ENTITLEMENTS

Can I use my sick leave before or after pregnancy?

- Prior to pregnancy with evidence from a medical practitioner.
- Following delivery for recovery from childbirth (if not accessing E.I. or top-up).

FIFTH DISEASE

Is there a process for dealing with this?

- Immunity test
- Board protocol

TEACHER PERFORMANCE APPRAISAL

- If a teacher is on a leave during all or part of the evaluation cycle, any appraisal that would otherwise be carried out during that period must be conducted within 60 school days following the teacher's return from the leave.

COLLEGE OF TEACHERS

- April payment
- Your responsibility to pay the College directly

CHECKLIST FOR PREGNANCY/PARENTAL LEAVES

- ✓ Review your local collective agreement language regarding a Supplemental Employment Benefits Plan and Pregnancy, Parental, and Extended Leaves of Absence.
- ✓ Contact your ETFO Local or the ETFO provincial office to discuss your options.
- ✓ Obtain a medical certificate stating the expected date of birth.
- ✓ Provide written notice to your school board.
- ✓ Review information re: health benefits, long-term disability (if applicable), and pension contributions.

CHECKLIST FOR PREGNANCY/PARENTAL LEAVES

- ✓ Obtain application from Service Canada regarding your application for benefits.
- ✓ Obtain a copy of your Record of Employment (R.O.E.) from the School Board after your last teaching day.
- ✓ Complete your application for E.I. Benefits.
- ✓ Provide proof of your E.I. Claim to the board in order to receive SEB.
- ✓ Add your child to your benefit plan.
- ✓ Remember to pay your OCT fee.
- ✓ Relax! You've taken care of all the paperwork!



www.servicecanada.gc.ca