

Pregnancy & Parental Leaves

A Guide

ONTARIO ENGLISH
**Catholic
Teachers**
ASSOCIATION

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This document is provided for your convenience and information only. It is not a legal document. For further information and precise interpretation, please refer to the *Employment Insurance Act* and the *Employment Standards Act* and Regulations.

TABLE OF CONTENTS

EMPLOYMENT INSURANCE ACT – FEDERAL

Maternity and Parental Benefits	1
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EMPLOYMENT STANDARDS ACT – PROVINCIAL

Provision of Leaves of Absence	2
--	---

SICK LEAVE ACCESS	3
-----------------------------	---

FREQUENTLY ASKED QUESTIONS

Preganancy Leave	4
----------------------------	---

Parental Leave	10
--------------------------	----

Maternity and Parental Benefits

Pregnancy Benefits

- 2 weeks unpaid waiting period (check your collective agreement to see if your school board has a supplementary employment benefits (SEB) plan).
- 15 weeks of paid employment insurance (EI) benefits (see page 3 of this booklet to see how to access sick benefits following childbirth).
- You can apply for benefits 10 weeks before birth; benefits will be paid no earlier than 8 weeks before birth or later than 17 weeks after birth.

Parental Benefits

- Up to 35 weeks of benefits paid for birth or adoption mother or father. Benefits can be shared.
- No benefits later than 52 weeks after childbirth or after the child comes into the parents' care, custody and control.
- No second waiting period if benefits are shared between parents.

Be Aware

- Pregnancy and parental benefits are known as Special Benefits.
- To qualify you must have accumulated at least 600 hours of insurable earnings in the last 52 weeks with one or more employers.
- Benefits are based on an average weekly earnings calculation taken over the 26-week period immediately preceding the claim.
- You can collect a maximum of 67 weeks of special benefits (15 weeks of pregnancy, 35 weeks of parental and 15 weeks of sickness benefits – with one 2-week waiting period).

Provision of Leaves of Absence

Pregnancy Leave

- Up to 17 weeks of time available
- May begin leave as early as 17 weeks before due date
- Must provide employer with at least 2 weeks, written notice of the date this leave is to begin
- Must provide employer with a certificate from a legally qualified practitioner stating expected date of birth

Parental Leave

- Legislation provides up to 35 weeks for natural mother and father or 37 weeks for adoptive mother and father.
- Natural mother's leave must immediately follow pregnancy leave.
- Other parents must begin leave no later than 52 weeks after the child is born or comes into the parents' care, custody and control.

Be Aware

- You must have been employed for at least 13 weeks by the same employer.
- You must give at least 2 weeks, notice before the leave.
- You must give at least 4 weeks, notice to change the end date of the leave.
- The employer must continue to pay their share of benefits
- Seniority and experience for salary continue to accumulate during the leave(s).
- Reinstatement following the leave should be to the position held before the leave, if it still exists.

CAUTION!!

Note that the provision of the *Employment Insurance Act* and the *Employment Standards Act* are not perfectly aligned.

SICK LEAVE ACCESS

As required, you are entitled to access sick leave under your collective agreement before or after the birth of your baby.

As outlined in your collective agreement, you are entitled to sick leave with pay prior to the commencement of your pregnancy leave if you are unable to work for health reasons, whether or not they are related to your pregnancy.

Although not granted in legislation, several court rulings support an entitlement to the use of sick leave with pay for a period of normally 6 weeks immediately following childbirth. Check your collective agreement to see if a medical certificate is required.

You can only use the number of sick days that you have accumulated in the school board's sick leave plan.

The access to sick leave following birth does not extend your statutory sick leave. Any pay received will be distributed from EI benefits.

FREQUENTLY ASKED QUESTIONS

Pregnancy leave

What is the *Employment Standards Act*?

The *Employment Standards Act* is the law that contains Ontario's basic rules about working and employing people. Both workers and employers have rights and responsibilities under the Act.

What is pregnancy leave?

Pregnancy leave is a right pregnant women have under the Act to take a leave of at least 17 weeks off work.

Your employer does not have to pay you any wages when you are on pregnancy leave.

What about maternity benefits?

Eligible workers can apply for maternity benefits from the Employment Insurance Program during their pregnancy leave.

The Ontario Ministry of Labour cannot help a worker receive these federal benefits.

After a 2-week waiting period maternity benefits are paid for 15 weeks. The benefit rate is 55 per cent of insurable earnings to a maximum of \$413.00 per week, taxable.

Claimants must accumulate 600 hours of insured employment within the past 52 weeks.

What about parental leave?

Parental leave is a right new parents (fathers, mothers and adopting parents) have under the *Employment Standards Act*, to take time off from work when a baby or child first comes into their care.

I just started a new job. Can I take pregnancy leave?

To be eligible for pregnancy leave, you must have been hired by your employer at least 13 weeks, or more, before the date your baby is expected to be born.

The date your baby is expected to be born is also called your "due date" – in other words, the date you are due to give birth.

What if my baby is born before I have worked 13 weeks in my new job?

Your eligibility depends on the **date your baby is due**, or expected to be born – not the date it actually is born.

Eligibility for pregnancy leave does not change because the baby was born early, before the due date.

For example:

Your baby is due to be born 15 weeks after you start a new job; but your baby is born early, in week 12 instead.

You are still eligible for pregnancy leave because the due date was at least 13 weeks after you started the new job.

I work part-time. Can I take pregnancy leave?

Yes, both part-time and full-time workers qualify for pregnancy leave.

When can I start my pregnancy leave?

Your pregnancy leave can start any time during the 17 weeks before your baby is due.

The date you start your pregnancy leave is your choice. Your employer does not make this decision.

How long is pregnancy leave?

You have the right to at least 17 weeks of unpaid pregnancy leave. You can choose to take less time. In some cases, your leave may be longer:

- if your baby is born early, but within 17 weeks of your due date, you can take at least 17 weeks off work;
- if you are not eligible for parental leave after the birth, you can take at least six weeks off after your delivery, even if that means you are away from work more than 17 weeks.

In all cases, you should let your employer know in writing what is happening.

What if I have to stop working earlier than I planned?

If you have to stop working earlier than you planned, you must get a letter from your doctor and give it to your employer no later than two (2) weeks after you stop work.

This letter should say:

- you are not able to work because of your pregnancy;
- the date your baby is expected or the date your baby was born;
- when your pregnancy leave began, or will begin, and when it will end.

You will have to start pregnancy leave if your baby has been born.

What if my baby is born later than expected?

If you started your pregnancy leave as planned but your baby is born late, you still can't take more than 17 weeks' pregnancy leave. But if you are eligible for parental leave, it would usually start right after your pregnancy leave ends.

If I am sick, can my employer make me start my pregnancy leave?

No, your employer cannot make you start your pregnancy leave if you are sick, even if you are sick because you are pregnant. This is against the law.

You do have the right to access your accumulated sick leave as per your collective agreement.

Do I have to take all my pregnancy leave at one time?

Yes, you must take all your pregnancy leave at one time. You cannot split it up.

How do I tell my employer what my plans are?

You have to give your employer a letter that says what your plans are. This is called a "written notice."

When you are taking pregnancy leave, there are two (2) rules you need to know about giving written notice to your employer:

- **before** you start your pregnancy leave, you must give written notice **at least two (2) weeks before** you plan to start your leave;
- **after** you start your leave, you must give written notice **at least four (4) weeks before** the date any change in your plans happens.

What do I say in my written notice?

Two (2) weeks or more before you plan to start your leave, you must give your employer a letter that says:

- the date you plan to start your pregnancy leave;
- the date you plan to return to work. If you don't include this date, your employer will assume that you will take the full 17 weeks' pregnancy leave;
- whether or not you plan to take parental leave. If you are not sure you will be taking parental leave, or how much, you can wait and give notice for it two (2) weeks before your pregnancy leave ends.

Note: You must include a letter from your doctor with your written notice. That letter must say when your baby is due to be born.

What if my plans change?

You must give written notice to your employer about any changes in your plans and any new dates.

When you must give this notice depends on whether or not you have started your leave.

Before you start your leave:

If the dates of your leave change, you must tell your employer about this two (2) weeks, or more, before the date the changes happen. For example:

- if you want to start your leave **earlier**, you must give written notice at least two (2) or more weeks **before the earlier date** as the start of your leave;
- if you want to start your leave **later**, you must give written notice at least two (2) more weeks **before the original date** you gave as the start of your leave.

After your leave starts:

If you want to change the date of your return to work, you must give written notice **at least four (4) weeks before the change happens**. For example:

- if you want to return to work **earlier** than you first said, you must give written notice at least four (4) or more weeks before the **new date** you want to go back to work;
- if you want a **longer** leave, you must give written notice at least four (4) or more weeks before the **date you first said** you would return to work.

What happens to my pay, seniority and benefits?

- Your employer does not have to pay you wages when you are on pregnancy leave.
- You earn seniority and some benefits when on pregnancy leave, just as if you had stayed at work.

- While you are on pregnancy leave, your employer must pay the employer portion of payments to certain benefit plans (such as pension plans, life and health insurance) **unless** you tell your employer, in writing, that you do not want to keep making your own payments (if any) to such plans.

What happens when I return to work?

It is OECTA's position that your employer must give you back the job you were doing when you went on leave. However, this may have to be dealt with in a grievance.

If the wages for your job have increased while you were on leave, you must get the higher wage.

If your old job is gone, your employer must give you a job that is like your old job.

The wages must be similar to the wages for your old job, or better.

Can my employer fire me for taking pregnancy leave?

No. If you are eligible for a pregnancy leave, you can't be fired or laid off, penalized or suspended because you applied for, or took, this leave.

What if my employer does not follow these rules?

If you think your employer has not followed the rules in the *Employment Standards Act*, you can call your Unit Office or Provincial Office for assistance. It may be necessary to file a grievance.

Parental Leave

What is the *Employment Standards Act*?

Ontario's basic rules about working and employing people are in this law. Both workers and employers have rights and responsibilities under the Act.

What is parental leave?

Parental leave is a right new parents have under the *Employment Standards Act*.

The length of the parental leave available to new parents under the *Employment Standards Act* was changed in 2000. You can take a personal leave of:

- Up to 35 weeks if you also took a pregnancy leave, or
- Up to 37 weeks if you did not take a pregnancy leave.

You have to begin the leave no later than 52 weeks after the birth of your child or the date your child came into your custody, care and control.

Your employer does not have to pay you any wages when you are on parental leave.

What about 'parental benefits'?

'Parental Benefits' from the Employment Insurance Program are not the same as 'Parental Leave' under the *Employment Standards Act*.

Parental benefits are currently 35 weeks for biological or adoptive parents. The benefits can be accessed by one parent or shared at the same time, consecutively or on alternating weeks. Claimants must accumulate 600 hours of insured employment within the past 52 weeks to be eligible for benefits.

A maximum of 35 weeks of parental benefits are available (with one waiting period). The benefit rate is 55 per cent of insurable earnings to a maximum of \$413.00 a week, taxable.

Eligible workers can apply for 'parental benefits' from the Employment Insurance Program during their parental leave.

When can I take parental leave?

You can take parental leave:

- after the birth of a child; or
- after a child comes into your care for the first time.

Who can take parental leave?

Both parents, father and mother, can take parental leave if they work for an employer that is under Ontario's labour laws.

What kinds of 'parents' can take parental leave?

A 'parent' is a man or woman who:

- is the birth parent of a child;
- adopts a child;
- becomes a step-parent;
- is in a long-lasting relationship with the parent of a child and intends to treat the child as his or her own.

I work part-time. Can I take parental leave?

Yes, both part-time and full-time workers qualify for parental leave.

I just started a new job. Can I take parental leave?

To be eligible for parental leave, you must have been hired by your employer at least 13 weeks or more before the date your leave is going to start.

Is this part of pregnancy leave?

No. A birth mother can take both pregnancy leave and parental leave.

A birth mother can take 35 weeks of parental leave right after her 17 weeks of pregnancy leave, for a total of 52 weeks.

A father, or other parent, has a separate right to 37 weeks parental leave.

When does parental leave start?

- If you are on pregnancy leave, parental leave must start when pregnancy leave ends.
- But if your baby is not in your care when your pregnancy leave ends (for example, your baby is in hospital), you may be able to start your parental leave after the baby comes home and into your care.
- If you are a father, adopting parent or a step-parent, you decide when you will take your leave.
- You have to start your parental leave no later than 52 weeks after the baby is born or first came into your care. (Be aware that EI benefits end at the 52nd week).

Do I have to take my parental leave all at one time?

Yes, parental leave must be taken all at one time.

How long does parental leave last?

Your parental leave can last up to 37 weeks. But if you also took pregnancy leave, your parental leave cannot be longer than 35 weeks.

How do I tell my employer what my plans are?

You have to give your employer a letter that says what your plans are. This is called "written notice."

When planning to take parental leave, there are two (2) rules you need to know about giving written notice to your employer:

- **Before you start your leave**, you must give your employer written notice **at least two (2) weeks** before the date your leave is to start, or the date any changes in your plans will happen.

- **After you start your leave**, you must give written notice **at least four (4) weeks** before the date any change in your plans happens.

What do I say in my written notice?

Two (2) weeks or more before you plan to start your leave, you must give your employer a letter that says:

- the date you plan to start your parental leave;
- the date you plan to return to work. If you do not say this, your employer must assume that you will be taking the longest leave that is available to you under the *Employment Standards Act*.

Note: If you are a mother planning to take both pregnancy leave and parental leave, you must give your employer written notice that you will be taking parental leave.

This notice must be given at least two (2) weeks before your pregnancy leave ends. Or, it can be given at the same time as you give notice for pregnancy leave.

What if my plans change?

You must give your employer written notice about any changes in your plans and any new dates.

Before your leave starts:

If the starting date of your leave changes, you must tell your employer about it **two (2) or more weeks before** the date the change happens. For example:

- if you want to start your leave **earlier**, you must give written notice of the change at least two (2) or more weeks before the **new date**;
- if you want to start your leave **later**, you have to give the written notice at least two (2) or more weeks before the **date you gave earlier** as the start of your leave.

After your leave starts:

If you want to change the date of your return to work, you must give written notice **at least four (4) weeks before** the change happens. For example:

- if you want to return to work **earlier** than you first said, you must give written notice, to your employer, at least four (4) or more weeks before the **new earlier date**;
- if you want a **longer** leave (but not longer than the limit allowed under the *Employment Standards Act*), you must give your employer written notice at least four (4) or more weeks before the **date you first said** you would be going back to work.

What if I have to start my parental leave suddenly?

If you have to start your leave suddenly, because of your baby or child came earlier than expected, you have two (2) weeks after stopping work to give written notice to your employer.

The notice should say:

- why you had to start the leave suddenly; and
- the date you will return to work.

What happens to my pay, seniority and benefits?

Your employer does not have to pay you wages when you are on parental leave.

You earn seniority and some benefits when on parental leave, just as if you had stayed at work.

While you are on parental leave, your employer must pay the employer portion of payments to certain benefit plans (such as pension plans, life and health insurance), unless you have told your employer, in writing, that you do not want to keep making your own (employee) payments (if any) to such plans.

What happens when I return to work?

It is OECTA's position that your employer must give you back the job you were doing when you went on parental leave. However, this may have to be dealt with in a grievance.

If the wages for your job have increased while you were on leave, you must get the higher wage.

If your old job is not there any more, your employer must give you a job that is similar to your old job.

The wages in any new job must be the same as the wages of your old job, or better.

Can my employer fire me for taking parental leave?

No. If you are eligible for a parental leave, you can't be fired or laid off, penalized or suspended because you applied for, or took, this leave.

If I am pregnant again when I return to work from a pregnancy/parental leave can I take another leave?

Under the *Employment Standards Act* the employee is eligible to take a 17-week pregnancy leave followed by a 35-week parental leave.

To be eligible for benefits under the *Employment Standards Act* the employee must accumulate 600 hours of insurable time each time a leave is taken.

What if my employer does not follow these rules?

If you think your employer has not followed the rules under the *Employment Standards Act*, you can call your Unit Office or Provincial Office for assistance. It may be necessary to file a grievance.

If you have any further questions please contact:

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