Pregnancy and Parental Leave

Revised: November 21, 2014
Content last reviewed: November 2014

This guide is provided for your information and convenience only. It is not a legal document. For complete information, refer to the Employment Standards Act, 2000 and its regulations.

Pregnancy Leave | Parental Leave | Rights for Employees Taking Pregnancy and Parental Leaves

Pregnant employees have the right to take pregnancy leave of up to 17 weeks of unpaid time off work. In some cases the leave may be longer. Employers do not have to pay wages to someone who is on pregnancy leave.

New parents have the right to take parental leave—unpaid time off work when a baby or child is born or first comes into their care. Birth mothers who took pregnancy leave are entitled to up to 35 weeks' leave. Birth mothers who do not take pregnancy leave and all other new parents are entitled to up to 37 weeks' parental leave.

Parental leave is not part of pregnancy leave and so a birth mother may take both pregnancy and parental leave. In addition, the right to a parental leave is independent of the right to pregnancy leave. For example, a birth father could be on parental leave at the same time the birth mother is on either her pregnancy leave or parental leave.

Employees on leave have the right to continue participation in certain benefit plans and continue to earn credit for length of employment, length of service, and seniority. In most cases, employees must be given their old job back at the end of their pregnancy or parental leave.

An employer cannot penalize an employee in any way because the employee is or will be eligible to take a pregnancy or parental leave, or for taking or planning to take a pregnancy or parental leave.

Ontario's ESA and the Federal Employment Insurance Act

The Employment Standards Act, 2000 (ESA) provides eligible employees who are pregnant or are new parents with the right to take unpaid time off work.

In contrast, the federal Employment Insurance Act provides eligible employees with maternity and/or parental benefits that may be payable to the employee during the period he or she is off on an ESA pregnancy or parental leave.

The rules governing the right to take time off work for pregnancy and parental leave under the ESA are different from the rules regarding the payment of maternity benefits and parental benefits under the federal Employment Insurance Act. For example, a new father may choose to commence a parental leave under the ESA up to 52 weeks after the child is born. However, there may be restrictions on accessing the employment insurance parental benefits at that time. It is extremely important that employees obtain information about their rights to EI benefits if they are considering taking a pregnancy or parental leave under the ESA. For information about maternity and parental benefits, contact Service Canada's Employment Insurance Automated Telephone Information Service at 1-800-206-7218.

Pregnancy Leave

Pregnant employees have the right to take pregnancy leave of up to 17 weeks, or longer in certain circumstances, of unpaid time off work.

Qualifying for Pregnancy Leave

A pregnant employee is entitled to pregnancy leave whether she is a full-time, part-time, permanent or term contract employee provided that:

- she is employed by an employer that is covered by the ESA,
  and
- she started her employment 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 have commenced employment at least 13 weeks before the baby is expected to be born.

Example: A typical case

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

Example: When an employee is off sick

Fatima began her employment 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 her employment began and her due date. The fact that she did not actually work 13 weeks is irrelevant.

Example: When a baby is born before the due date

Meredith began her employment 15 weeks before her due date. However, 11 weeks after starting her new job, 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 began her employment and her due date. The fact that her baby was born less than 13 weeks after she began her employment 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.

Length of a Pregnancy Leave

A pregnancy leave can last a maximum of 17 weeks for most employees. However, if an employee has taken a full 17 weeks of leave but is still pregnant, she may continue on the pregnancy leave until the birth of the child. If she has a live birth, the pregnancy leave will end on the date of the birth and then, in most cases, she will be able to commence her parental leave.

An employee may decide to take a shorter leave if she wishes. However, once an employee has started her pregnancy leave, she must take it all at once. She cannot use up part of the 17 weeks, return to work and then go back on pregnancy leave for the unused portion. If she returns to work for the employer from whom she took the leave, even if it is only part-time, under the ESA she gives up the right to take the rest of her leave.

(Note that under the federal Employment Insurance Program, employees are able to return to work and earn a certain amount of wages without having their employment insurance benefits reduced. However, under the ESA, a return to work, even on a part-time basis, would end the pregnancy leave.)

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.

Example: 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.

Example: 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 (for example, 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 a complication caused by her 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). In that case, she has two weeks after she stops working to give the employer written notice of the day the leave will begin. If the employer requests it, the employee has to provide a medical certificate stating the baby’s due date and stating that she was unable to perform the duties of her position because of the complication.

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.

Example: Changing the start of a pregnancy leave to an earlier date

Barbara gave her employer written notice that she would begin her pregnancy leave on September 10. Now Barbara wants to start her leave on August 27. She must give her employer new written notice by August 13 (two weeks before August 27).

An employee can also change the date she will begin her leave to a later date than she originally told her employer. To do this, she must give her employer new written notice at least two weeks before the original date she said she would begin her leave.

Example: Changing the start of a pregnancy leave to a later date

Mairead gave her employer written notice that she would start her pregnancy leave on September 10. Now Mairead wants to start her leave on September 15. She must give her employer new written notice by August 27 (two weeks before September 10).

Failing to Give Notice

An employee who fails to give the required notice does not lose her right to a pregnancy leave.

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 has no right under the ESA to 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 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. This notice requirement does not apply if the employer constructively dismisses the employee. (See "Termination of Employment" chapter for information about constructive dismissal.)

Parental Leave

Both new parents have the right to take parental leave of up to 35 or 37 weeks of unpaid time off work.

Qualifying for Parental Leave

A new parent is entitled to parental leave whether he or she is a full-time, part-time, permanent or term contract employee provided that the employee:

- is employed by an employer that is covered by the ESA,
was employed for at least 13 weeks before commencing the parental leave.

An employee does not have to actively work in the 13-week period preceding the start of the parental leave. For example, the employee could be on layoff, vacation, sick leave or pregnancy leave for all or part of the 13-week qualifying period and still be entitled to parental leave. The ESA only requires the employee to have been employed by the employer for 13 weeks before he or she may commence a parental leave.

A "parent" includes:

- a birth parent;
- an adoptive parent (whether or not the adoption has been legally finalized); or
- a person who is in a relationship of some permanence with a parent of the child and who plans on treating the child as his or her own. This includes same-sex couples.

**When a Parental Leave Can Begin**

A birth mother who takes pregnancy leave must ordinarily begin her parental leave as soon as her pregnancy leave ends. However, an employee's baby may not yet have come into her care for the first time when the pregnancy leave ends. For example, perhaps her baby has been hospitalized since birth and is still in the hospital's care when the pregnancy leave ends.

In this case, the employee can either commence her leave when the pregnancy leave ends or choose to return to work and start her parental leave later. If she chooses to return to work, she will be able to start her parental leave anytime within 52 weeks of the birth or the date the baby first came home from the hospital.

All other parents must begin their parental leave no later than 52 weeks after:

- the date their baby is born;
- or
- the date their child first came into their care, custody and control.

The parental leave does not have to be completed within this 52-week period. It just has to be started.

**Length of a Parental Leave**

Birth mothers who take pregnancy leave are entitled to take up to 35 weeks of parental leave. All other new parents are entitled to take up to 37 weeks of parental leave.

Employees may decide to take a shorter leave if they wish. However, once an employee has started parental leave, he or she must take it all at one time. The employee cannot use up part of the leave, return to work for the employer and then go back on parental leave for the unused portion.

(Note that under the federal Employment Insurance Program, employees are able to return to work and earn a certain amount of wages without having their employment insurance benefits reduced. However, under the ESA, a return to work, even on a part-time basis, would end the parental leave.)

**Miscarriages and Stillbirths**

An employee who has a miscarriage or stillbirth, or whose spouse or same-sex partner has a miscarriage or stillbirth, is not eligible for parental leave.

**Notice Requirements for Parental Leave**

**Giving Notice About Starting a Parental Leave**

An employee must give his or her employer at least two weeks' written notice before beginning a parental leave. If an employee is also taking a pregnancy leave, she may, but is not required to, give her employer notice of the parental leave when she gives notice of her pregnancy leave.

**Retroactive Notice**

Sometimes, an employee may stop working earlier than expected because a child is born or comes into the employee's custody, care and control for the first time earlier than expected. In this case, the employee has two weeks after stopping work to give the employer written notice that he or she is taking parental leave. The parental leave begins on the day the employee stops working.

**Changing The Start of a Parental Leave to an Earlier Date**

Suppose an employee has given notice to begin a parental leave. The employee can begin the leave earlier than he or she has told the employer by giving the employer new written notice at least two weeks before the new, earlier date.

Example:

Leroy gave his employer written notice that he would begin his parental leave on September 10. Now he wants to start his leave on August 27. Leroy must give his employer new written notice by August 13 (two weeks before August 27).
An employee can also change the starting date of the leave to a later date than he or she originally told the employer. To do this, the employee must give the employer new written notice at least two weeks before the original date the leave was going to begin.

Example:
Wendy gave her employer written notice that she would start her parental leave on September 10. Now Wendy wants to start her leave on September 15. She must give her employer new written notice by August 27 (two weeks before September 10).

Failing to Give Notice

An employee who fails to give the required notice does not lose his or her right to a parental leave.

Giving Notice About Ending a Parental Leave

An employee can tell the employer when he or she will be returning to work, but is not required to do so. If the employee does not specify a return date, the employer is to assume that the employee will take his or her full 35 or 37 weeks of leave. An employer cannot require an employee to return from leave early.

Changing the Date a Parental Leave Ends

An employee may want to return to work earlier than the date he or she was scheduled to return. If so, the employee must give the employer written notice at least four weeks before the new, earlier day.

An employee may want to return to work later than he or she was scheduled to return. In this case, the employee must give the employer new written notice at least four weeks before the date the employee was originally going to return. However, unless the employer agrees, the employee cannot schedule a new return date that would result in the employee taking a longer leave than he or she is entitled to under the ESA.

When an Employee Decides Not to Return to Work

Suppose an employee decides to resign before the end of his or her parental leave, or at the end of the leave. The employee must give the employer at least four weeks' written notice of the resignation. This notice requirement does not apply if the employer constructively dismisses the employee. (See "Termination of Employment" chapter for information about constructive dismissal.)

Rights for Employees Taking Pregnancy and Parental Leaves

Employees on pregnancy or parental leave have several rights.

The Right to Reinstatement

In most cases, an employee who takes a pregnancy or parental leave is entitled to:

- the same job the employee had before the leave began; or
- a comparable job, if the employee's old job no longer exists.

In either case, the employee must be paid at least as much as he or she was earning before the leave. Also, if the wages for the job went up while the employee was on leave, or would have gone up if he or she hadn't been on leave, the employer must pay the higher wage when the employee returns from leave.

If an employer has dismissed an employee for legitimate reasons that are totally unrelated to the fact that the employee took a leave, the employer does not have to reinstate the employee.

The Right to Be Free from Penalty

Employers cannot penalize an employee in any way because the employee:

- took a pregnancy or parental leave;
- plans to take a pregnancy or parental leave;
- is eligible to take a pregnancy or parental leave; or
- will become eligible to take a pregnancy or parental leave.

The Right to Continue to Participate in Benefit Plans

Employees on pregnancy or parental leave have a right to continue to take part in certain benefit plans that their employer may offer. These include:

- pension plans;
- life insurance plans;
- accidental death plans;
- extended health plans; and
- dental plans.
The employer must continue to pay its share of the premiums for any of these plans that were offered before the leave, unless the employee tells the employer in writing that he or she will not continue to pay his or her own share of the premiums.

In most cases, employees must continue to pay their share of the premiums in order to continue to participate in these plans.

Employees who are on pregnancy or parental leave can also continue to participate in other benefit plans if employees who are on other types of leave are able to continue to participate in those plans.

In addition, a female employee may be entitled to disability benefits during that part of the leave during which she would not have been able to work for health reasons related to her pregnancy or childbirth.

**The Right to Earn Credits for Length of Employment, Length of Service and Seniority**

Employees continue to earn credits toward length of employment, length of service, and seniority during periods of leave.

**Example: Length of service**

Trina's employment contract states that she earns 1 paid vacation day for each month of active service and that after 5 years (length) of service she will begin to earn 1 ½ paid vacation days for each month of active service. She is on pregnancy and parental leave for her entire 5th year of employment.

Because her leave will count towards "length of service" the year on leave will count to complete her 5 years length of service and she will be then be entitled to earn 1 ½ paid vacation days for each month of active service when she returns from her leave.

However, while she was on the leave she was not earning credit for active service and so under her contract she was not earning paid vacation days during the leave itself. At the end of the leave she would not have earned any paid vacation under contract but the employer would be required to ensure that she received at least the minimum vacation entitlement for that year (2 weeks of vacation time off plus 4% of any wages earned in that year).

**Example: Seniority**

Karen is a member of a union that has bargaining rights at her workplace. Under the collective agreement, an employee's seniority determines such things as order of layoff and recall, job promotions and annual vacation entitlements. Karen continues to accrue seniority for all purposes during her pregnancy and parental leaves, just as if she had been actively employed.

**Probation**

The period of a leave is not included when determining whether an employee has completed a probationary period. If an employee was on probation at the start of a leave, he or she must complete the probationary period after returning to work.