



LEGISLATIVE SUMMARY



***Bill C-13:
An Act to amend the Employment
Insurance Act (Fairness for Military
Families (Employment Insurance) Act)***

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Legislative Summary of Bill C-13

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Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

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LEGISLATIVE SUMMARY OF BILL C-13: AN ACT TO AMEND THE EMPLOYMENT INSURANCE ACT (FAIRNESS FOR MILITARY FAMILIES (EMPLOYMENT INSURANCE) ACT)

1 BACKGROUND

Bill C-13, An Act to amend the Employment Insurance Act (short title: Fairness for Military Families (Employment Insurance) Act), was introduced in the House of Commons on 12 April 2010 by the Minister of Human Resources and Skills Development, the Honourable Diane Finley. **The bill was passed by the House of Commons on 16 June 2010 and was then sent to the Senate, where it was passed on 28 June 2010. It received Royal Assent the following day.** Under the bill, members of the Canadian Forces can request an extension of the benefit period and the period during which parental benefits¹ may be paid if the start date of their parental leave is deferred or if they are called back for military duty after their benefits were to have taken effect. The extension of the benefit period is for the number of weeks the claimant's leave was interrupted, up to a maximum period of 104 weeks.

The *Employment Insurance Act* (EI Act)² establishes an insurance system based on the nature of the employment. Section 5 of the EI Act describes what types of employment are considered to be insurable. Subsection 5(1)(c) of the EI Act mentions that service in the Canadian Forces is considered as insurable employment.

The EI Act currently provides that a member of the Canadian Forces is eligible to receive parental benefits if the eligibility criteria are met. To be entitled to special benefits, such as parental benefits, Canadian Forces members, like any other claimants, must have completed at least 600 hours of insurable employment in the qualifying period, which normally covers the previous 52 weeks or the time since the last claim if a qualifying period was established in the previous year.³

The EI Act also provides that the period to receive parental benefits can be extended under particular circumstances, such as when a claimant has been confined in jail. However, the law currently does not provide for an extension of the benefit period for members of the Canadian Forces who are called back on military duty.

2 DESCRIPTION AND ANALYSIS

2.1 EXTENDING THE BENEFIT PERIOD FOR MEMBERS OF THE CANADIAN FORCES (SUBCLAUSE 2(1))

Bill C-13 adds to the EI Act a new subsection permitting the extension of the benefit period for parental leave for members of the Canadian Forces. Subsection 10(12.1) provides that if the start date of a claimant's parental leave is deferred or if the

claimant is called back to duty during the period established to receive parental benefits, the benefit period will be extended for the number of weeks lost.

This change remedies the situation where members of the Canadian Forces were ineligible to extend their benefit period to receive parental benefits because they were away from their child by reason of military requirement.

2.2 MAXIMUM EXTENSION OF THE BENEFIT PERIOD (SUBCLAUSE 2(2))

Current subsection 10(15) of the EI Act provides that a benefit period can be extended up to a maximum number of weeks, with that number varying depending on the claimant's circumstances. In some cases, if the benefit period has already been extended because of particular circumstances, such as being in jail, the maximum number of weeks would not apply. These particular circumstances are provided under subsections 10(10) to (12) of the EI Act. Since Bill C-13 provides, through the addition of subsection 10(12.1), for the extension of the benefit period for members of the Canadian Forces being called back on duty, the bill provides for this change by adding a reference to subsection 12.1 in subsection 10(15) of the EI Act.

2.3 WEEKS PARENTAL BENEFITS MAY BE PAID FOR MEMBERS OF THE CANADIAN FORCES (CLAUSE 3)

Current section 23 of the EI Act provides for parental benefits. Subsection 23(2) establishes the beginning and the end of the benefit period, subject to the maximum number of weeks of benefits as mentioned above. Bill C-13 adds subsection 3.01 to section 23 to extend the benefit period for members of Canadian Forces by the amount of time that is lost by a deferment of the start date of the leave or a recall to duty.

In addition, Bill C-13 adds at subsection 23(3.1) that the period during which members of the Canadian Forces may receive parental benefits cannot be extended to more than 104 weeks. Effectively, this means that the benefit period cannot be extended beyond two years.

2.4 RETROACTIVITY OF PARENTAL BENEFITS FOR CANADIAN FORCES MEMBERS (SUBCLAUSE 4(1))

The original clause 4 of the bill was amended and now has three subclauses. Subclause 4(1) was added to change the retroactivity period applicable for the receipt of parental benefits. The amendments pertaining to the extension of the benefit period and the parental benefit payment period for Canadian Forces members whose parental leave is deferred or who are called back to duty apply to claimants whose benefit period started less than 104 weeks – less than two years – before the coming into force of the bill in the following two cases:

- a) the parental benefit payment period set out in subsection 23(2) of the EI Act has not ended before the end of this two-year period before the coming into force of the bill;**

- b) the benefit period ended before this two-year period because the parental leave was deferred or the Canadian Forces member was called back to duty during parental leave and the deferral or return to duty had not ended before the end of the two-year period before the coming into force of the bill.

In other words, a service member whose child is born during the two-year period prior to the coming into force of the bill may extend the parental benefit period if the parental leave was deferred or if the service member was called back to duty during that period. Under the second option, for a recalled service member whose child is born before this two-year period, thus where the payment period has expired, the parental leave may be extended if the deferral or return to duty has not yet ended.

2.5 MAXIMUM OF 104 WEEKS OF PARENTAL BENEFITS FOR CANADIAN FORCES MEMBERS (SUBCLAUSE 4(2))

Subclause 4(2) of the bill confirms that, in reference to clause 2 of the bill, if the start of the parental leave is deferred or if the claimant is called back to duty during the parental benefit period, the benefit period is extended by the number of weeks lost due to the deferral or return to duty.

Subclause 4(2) of the bill also refers to subsection 23(2) which establishes the start and the end of the benefit period. Subclause 4(2) extends this period to 104 weeks if all of the following conditions are met:

- a) during the period when parental benefits may be paid, the parental leave of a Canadian Forces member is deferred or the member is called back to duty during that leave in accordance with the regulations made under the *National Defence Act*;
- b) the deferral or return to duty ended before the coming into force of the bill;
- c) the claimant's benefit period did not end before the coming into force of the bill; and
- d) the period referred to in subsection 23(2) ended before the coming into force of the bill.

2.6 BENEFIT PERIOD AND PARENTAL BENEFIT PAYMENT PERIOD EXTENDED TO 104 WEEKS (SUBCLAUSE 4(3))

The benefit period and the benefit payment period are each extended to 104 weeks if all of the following conditions are met:

- a) during the benefit payment period, the start of the claimant's parental leave is deferred or the claimant is called back to duty during this period in accordance with the regulations made under the *National Defence Act*;

- b) the period during which parental leave was deferred or the Canadian Forces member was called back to duty ended before the bill came into force; and
- c) the benefit period and the benefit payment period started less than 104 weeks before the coming into force of the bill and ended before that date.

2.7 COMING INTO FORCE (CLAUSE 5)

Clause 5 provides that the Act will come into force on the first Sunday after the day on which it receives Royal Assent. **The bill received Royal Assent on 29 June 2010.**

NOTES

1. Parental benefits provide income replacement for up to 35 weeks to biological or adoptive parents while they are caring for a newborn or newly adopted child.
2. *Employment Insurance Act* (1996, c. 23).
3. *Ibid.*, subsection 153.1(1).