



# Labour

## Information on **LABOUR STANDARDS**

### **5 MATERNITY-RELATED REASSIGNMENT AND LEAVE, MATERNITY LEAVE AND PARENTAL LEAVE**

#### **Part III of the *Canada Labour Code* (Labour Standards)**

The *Canada Labour Code* provides for maternity-related reassignment and leave, maternity leave, and parental leave.

The following questions and answers will be of interest to employers and employees under federal jurisdiction. Pamphlet 1 of this series describes the types of businesses covered by the Code. It is available on the [labour.gc.ca](http://labour.gc.ca) website.

#### **1. What is meant by “maternity-related reassignment” and “job modification”?**

An employee who is pregnant or nursing may request that the employer modify her job functions or reassign her to another job if continuing any of her current job functions may pose a risk to her health or that of her foetus or nursing child. This request must be accompanied by a certificate from a qualified medical practitioner indicating how long the risk is likely to last and what activities or conditions should be avoided in order to eliminate the risk.

#### **2. What is the employer’s obligation in such a case?**

An employer must examine the request in consultation with the employee and, where reasonably practicable, modify the employee’s job functions or reassign her.

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An employee who has made a request for a reassignment or job modification is entitled to leave with pay while the employer is examining her request and until the employer modifies her job function, reassigns her or informs her that it is not reasonably practicable to modify her job functions or reassign her.

Where a reassignment or a job modification is not reasonably practicable, an employee may take an unpaid leave of absence for the duration of the risk as indicated in the medical certificate.

An employee who is pregnant or nursing is entitled to an unpaid leave of absence during the period from the beginning of the pregnancy to the end of the twenty-fourth week following the birth, if she provides the employer with a certificate of a medical practitioner of her choice indicating that she is unable to work by reason of the pregnancy or nursing and indicating the duration of that inability.

For further details, please refer to Division VII of Part III of the *Canada Labour Code*.

**3. Can the employer require a pregnant or nursing employee to continue to work in a hazardous environment until the employee produces a medical certificate?**

Part II of the *Canada Labour Code* (Occupational Health and Safety) enables the pregnant or nursing employee to cease to perform her job if she feels there is a risk to her health or that of the foetus or child, until a medical certificate can be obtained.

For further details, please refer to Pamphlet 5, Pregnant and Nursing Employees, of the Information on Occupational Health and Safety series.

**4. Who is entitled to maternity leave?**

Female employees, including managers and professionals, who have completed six consecutive months of continuous employment with the same employer when their leave begins.

**5. Who is entitled to parental leave?**

Natural or adoptive parents, including managers and professionals, who have completed six consecutive months of continuous employment with their employer at the time their leave begins.

**6. By six months of continuous employment, do you mean an employee must not have been absent from work during six months to be eligible for leave?**

No. Absences that are not terminations of the employer-employee relationship do not interrupt continuity of employment.

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**7. How much leave is provided for under the Code?**

The Code provides for up to 17 weeks of maternity leave. In addition, an employee who assumes actual care of a newborn or newly adopted child is entitled to parental leave of up to 37 weeks. However, the total duration of the maternity and the parental leaves must not exceed 52 weeks. Note that there is an exception to these maximum leave durations – see answer to question 17.

**8. Can both parents take parental leave?**

Yes. If they both work for an employer falling under the jurisdiction of the Code, the two parents are entitled to combined parental leave of up to 37 weeks. Parents have the option of taking their parental leave at the same time, or one after the other, as long as the total combined parental leave does not exceed 37 weeks. Also, the 52 week combined maternity and parental leave limitation stated in the answer to question 7 above applies.

**9. Must both parents work for the same employer to combine parental leave?**

No. Provided the employers are under the jurisdiction of Part III of the Code, even if they are two separate employers, the two employees must combine their parental leave.

**10. Can an employee take both maternity and parental leave?**

Yes. An employee may take parental leave after completing her maternity leave, subject to the maximum combined amount of leave that may be taken by both parents.

**11. When can leave be taken?**

The 17 week maternity leave may be taken any time during the period that begins 11 weeks before the expected date of delivery and ends 17 weeks after the actual delivery date.

Parental leave may be taken any time during the 52 week period starting the day the child is born or the day the child comes into the employee's care. These periods can be extended in some cases (see answers to questions 15 and 16).

**12. What must an employee do to obtain leave?**

An employee must give the employer written notice at least four weeks before beginning either maternity or parental leave. The notice must advise the employer of the intended length of leave.

For maternity leave, the employee must also provide the employer with a certificate from a qualified medical practitioner confirming that she is pregnant.

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**13. Must an employee have completed six months of continuous employment before applying for leave?**

No. An employee may apply prior to having completed six months of employment, but leave cannot begin until six months of employment are completed.

**14. Can an employer compel an employee to take maternity leave?**

No. A pregnant employee cannot be required to take leave unless her employer can show that she is unable to perform an essential function of her job.

**15. Can maternity leave be interrupted?**

Yes. The maternity leave can be interrupted if the employee's child is hospitalized shortly after birth or adoption.

In this situation, with the consent of the employer, the employee can interrupt the leave and temporarily return to work. The period within which maternity leave may be taken is extended by the number of weeks the child is hospitalized. However, maternity leave must end no more than 52 weeks after the date of delivery.

**16. Can parental leave be interrupted?**

Yes. The parental leave can be interrupted if the employee's child is hospitalized shortly after birth or adoption. In this situation, with the consent of the employer, the employee can interrupt the leave and temporarily return to work.

It is also possible for an employee to interrupt his or her parental leave to take compassionate care leave, leave related to critical illness of a child, leave related to death or disappearance of a child, sick leave, work-related illness or injury leave, or reservist leave (except for the purposes of annual training). In such a case, parental leave resumes immediately after the other leave ends.

The period within which parental leave may be taken (as described in the answer to question 11) is extended by the number of weeks during which the child is hospitalized or during which the employee takes one of the other leaves mentioned above. However, parental leave must end no later than 104 weeks after the day on which the child is born or comes into the employee's actual care.

**17. What must an employee do in order to return to work during the hospitalization of his or her child?**

An employee who intends to return to work, as a result of the hospitalization of his or her child, must give the employer a written notice of the requested leave interruption, as soon as possible.

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The employer must advise the employee in writing, within a week of receiving the notice, of his or her decision to accept or refuse the employee's request to return to work.

If the employer accepts the request to interrupt the leave, he or she may ask the employee, within 15 days of the return to work, to provide a medical certificate confirming that the child is hospitalized. An employee who has temporarily returned to work must also provide the employer with a written notice as soon as possible of the date on which the leave will resume.

If the employer refuses the employee's request to return to work or does not advise the employee within a week, the employee's leave can be extended by the number of weeks during which the child is hospitalized (this also increases the combined maximum amount of maternity and parental leave that can be taken by both parents). However, regardless of the duration of the hospitalization, maternity leave must end no more than 52 weeks after the date of delivery and parental leave must end no later than 104 weeks after the day on which the child is born or comes into the employee's actual care.

#### **18. What must an employee do if parental leave is interrupted to take another leave?**

An employee, who intends to interrupt the parental leave, must give the employer a written notice of the interruption before or as soon as possible after it begins. The employee must also give the employer a written notice of the day on which he or she intends to resume the parental leave, before or as soon as possible after that day.

#### **19. What happens to the employee's job upon return from maternity leave or parental leave?**

As a general rule, the employee must be reinstated in her or his former position, or be given a comparable position in the same location and with the same wages and benefits.

However, an employee who has interrupted his or her parental leave to take compassionate care leave, leave related to critical illness of a child, leave related to death or disappearance of a child, sick leave, work-related illness or injury leave, or reservist leave is subject to the reinstatement conditions that apply to these leaves. For example, an employee who has resumed parental leave after taking a sick leave can be assigned to a different position, with different terms and conditions of employment, if he or she is no longer able to perform the work performed prior to taking the leave.

#### **20. Could an employee ever receive lower pay upon returning to work?**

Yes. If, during a leave period, the wages and benefits of a group of employees are reduced as part of a reorganization plan, an employee who is reinstated in that group will receive no more than the wages and benefits she or he would have received if she or he had been at work during the reorganization. Likewise, if wages and benefits for the employee's group are increased during leave, the employee would be entitled to the increases upon return to work.

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**21. Do pension, health and disability benefits and the seniority of the employee accumulate during leave?**

Yes. These benefits continue during the leave period provided an employee pays any contributions she or he would normally have paid. Likewise, the accumulation of seniority continues during the absence.

**22. What if an employee chooses not to pay normal contributions related to pension, health and disability benefits for the leave period?**

Non-payment of contributions for the leave period has no impact on the employee's employment status. These benefits may lapse during the leave period, but employment upon reinstatement is considered to be continuous with employment before the leave, for purposes of calculating future benefits.

**23. Is the employer required to continue its contributions to the pension, health and disability benefits plan while the employee is on leave?**

Yes. The employer must pay at least the same share of contributions as if the employee were not on leave, unless the employee does not pay her or his contributions.

**24. Is an employee on leave entitled to receive information about opportunities for training and promotion?**

Yes. On the written request of the employee, employers must inform employees who are away on leave of every employment, training opportunities or promotion that arise during the period of leave.

**25. Can an employer dismiss or lay off an employee because she is pregnant or has applied for or intends to apply for maternity, maternity-related reassignment or leave or parental leave?**

No. An employer may not dismiss, suspend, lay off, demote or discipline an employee because she is pregnant or has applied for or intends to apply for maternity or parental leave, maternity-related reassignment or leave or modification of her job functions. An employer cannot take pregnancy into account in any decision to promote or train an employee.

**26. When a collective agreement does not provide for maternity or parental leave, is the employer still obliged to grant it?**

Yes, provided the employee meets the requirements of the Code.

How Maternity and Parental Leave available under Part III of the *Canada Labour Code* (CLC ) compares with the Maternity and Parental Benefits under Employment Insurance (EI).

Scenario	Part III CLC Leave	EI Benefits
<b>Only parental leave taken.</b> (e.g., in cases of adoption or where mother does not take maternity leave)	37 weeks of parental leave**	One two week waiting period* plus 35 weeks of parental benefits for 37 weeks in total.
<b>Only maternity leave taken.</b>	17 weeks of maternity leave**	One two week waiting period plus 15 weeks of maternity benefits for 17 weeks in total.
<b>Both maternity and parental leave taken</b>	Up to 17 weeks of maternity leave and up to 37 weeks of parental leave with a legislative cap of 52 weeks of combined maternity and parental leave**	One two week waiting period* plus 15 weeks of maternity benefits plus 35 weeks of parental benefits for 52 weeks in total.

\* If both parents share the parental benefits, only one two week waiting period applies.

\*\* An employee does not have to collect EI maternity and/or parental benefits to be eligible to take Part III maternity and/or parental leave.

This publication is provided for information only. For interpretation and application purposes, please refer to Part III of the *Canada Labour Code* (Labour Standards), the *Canada Labour Standards Regulations*, and relevant amendments.

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