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LEGISLATIVE SUMMARY



Bill C-243: An Act respecting the development of a national maternity assistance program strategy

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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-243
(Legislative Summary)

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LEGISLATIVE SUMMARY OF BILL C-243: AN ACT RESPECTING THE DEVELOPMENT OF A NATIONAL MATERNITY ASSISTANCE PROGRAM STRATEGY

1 BACKGROUND

Bill C-243, An Act respecting the development of a national maternity assistance program strategy (short title: National Maternity Assistance Program Strategy Act), was introduced in the House of Commons on 26 February 2016 by Mark Gerretsen, Member of Parliament for Kingston and the Islands.¹ Bill C-243 provides for the development and implementation of a national maternity assistance program, with the stated objective of “support[ing] women who are unable to work due to pregnancy and whose employer is unable to accommodate them by providing reassignment.”

According to Mr. Gerretsen, Bill C-243 was inspired by one of his constituents, Melodie Ballard, a welder by profession who suffered “serious financial hardship” and “significant personal distress” when the hazardous nature of her work and her employer’s inability to accommodate her pregnancy-related needs led her to temporarily withdraw from the workforce.²

Bill C-243³ was referred to the House of Commons Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (HUMA) on 26 October 2016.⁴ On 3 May 2017, HUMA reported the bill to the House of Commons with various amendments related to the national maternity assistance program strategy. The committee also removed all provisions and references with respect to the *Employment Insurance Act* (EI Act),⁵ such as the amendment to the EI Act to allow a pregnant claimant to begin using her maternity benefits 15 weeks before her expected date of delivery (anticipated “confinement”) if her employment duties or functions posed a risk to her health or to that of her unborn child and her employer was unable to accommodate her.⁶ A description and analysis of the clauses deleted at committee stage can be found in the appendix to this Legislative Summary.

In the meantime, the Speaker of the House of Commons ruled on 6 December 2016 that the bill, as it then stood, needed to be accompanied by a royal recommendation⁷ before it could receive third reading in the House of Commons. The ruling explained:

Bill C-243 does not impose any new charge on the public treasury but creates a new set of conditions, relating to the safety of their workplace for their pregnancy, under which pregnant women could have access to benefits related to their pregnancy from as early as 15 weeks before the birth of their child. ... [T]he Chair is not convinced that the current act allows spending under the circumstances, in the manner, and for the purposes [the sponsor] proposes. This being a circumstance not yet envisioned in the *Employment Insurance Act*, it infringes on the terms and conditions of the initial royal recommendation that accompanied that act and therefore requires now a new royal recommendation. This remains the case, even if the total amount of benefits stays the same.⁸

In light of HUMA's amendments, however, the Speaker ruled on 29 May 2017 that Bill C-243, as amended, no longer required a royal recommendation.⁹ The bill was passed by the House of Commons, with HUMA's amendments, on 14 June 2017.

1.1 EXISTING MEASURES TO SUPPORT
PREGNANT AND NURSING EMPLOYEES
WORKING IN A HAZARDOUS ENVIRONMENT

1.1.1 MATERNITY-RELATED REASSIGNMENT AND LEAVE

A pregnant or nursing employee in a federally regulated business or industry may “cease to perform her job” in accordance with Part II of the *Canada Labour Code*¹⁰ if she believes that her current job functions may pose a risk to her health or to that of her unborn or nursing child. However, she is required to consult a qualified medical practitioner as soon as possible to establish the nature of the risk and, if applicable, obtain a medical certificate.

During this period of non-performance, the employer may reassign the pregnant or nursing employee to another job that does not pose a health risk. Regardless of whether the employee is reassigned, she is deemed to continue to hold her original position, which also means that her wages and benefits do not change. If the medical practitioner confirms that there is a risk, the employee may no longer “cease to perform her job” under this special provision. She must then refer to the current collective agreement or to Part III of the Code.¹¹

Under Part III of the Code, a pregnant or nursing employee may request that her job functions be modified or that she be reassigned to another position if her job functions may constitute a health risk for the employee or her child. This request must be accompanied by a medical certificate establishing the expected duration of the risk and the activities or conditions to avoid.

Where reasonably practicable, the employer is required under Part III of the Code to modify the employee's job functions or reassign her, with the same wages and benefits attached to her original position. However, the employee is also entitled to a leave of absence with pay until the employer modifies her job functions, reassigns her to another position, or informs her in writing that it is not reasonably practicable to do either. Where the employer is unable to provide accommodation, the pregnant or nursing employee can take an unpaid leave of absence. This leave may be taken during the period from the beginning of the pregnancy to the end of the 24th week following the birth.¹² During this time, she may be eligible for some compensation under the current collective agreement, the EI Act or the employer's private insurance plan.¹³

Similar to the federal context, certain provincial and territorial legislation provides for an explicit duty to accommodate pregnant and nursing employees. These provisions are particularly common in relation to workplaces where women may be exposed to radiation or harmful substances.¹⁴ Exceptionally, as explained in greater detail below, occupational health and safety legislation in Quebec allows pregnant and nursing employees to take a precautionary leave of absence and be paid income replacement benefits where there are workplace-related health risks and the employer is unable to provide accommodation.¹⁵

While not all jurisdictions afford this kind of protection to pregnant and nursing employees under their occupational health and safety legislation or employment standards legislation, the *Canadian Human Rights Act*, along with human rights legislation enacted in all provinces and territories, prohibits discrimination related to pregnancy, either explicitly or as an element of the ground of “sex” or “gender,” within several contexts. This, in turn, imposes a duty on the employer to accommodate up to the point of undue hardship.¹⁶

1.1.2 EMPLOYMENT INSURANCE MATERNITY AND SICKNESS BENEFITS

In Canada, outside the province of Quebec, temporary financial assistance for pregnant and nursing workers is provided primarily through maternity benefits established in accordance with the EI Act. To be eligible for EI maternity benefits, women must meet the following criteria:

- the claimant must be employed in insurable employment and have paid EI premiums;
- the claimant must be unable to work because she is pregnant or has recently given birth;
- the claimant’s normal weekly earnings have been reduced by more than 40% because of pregnancy or the need to care for a newborn or newly adopted child; and
- the claimant must have accumulated at least 600 hours of insurable employment during the qualifying period (the qualifying period being the shorter of the 52-week period immediately before the start date of the EI period, or the period since the start of a previous EI period if this period started during the last 52 weeks).¹⁷

Maternity benefits are provided for a maximum of 15 weeks. At the time of the introduction of Bill C-243, claimants could receive maternity benefits as of the eighth week before the expected date of delivery. With the coming into force of Division 11 of Part 4 of Bill C-44, An Act to implement certain provisions of the budget tabled in Parliament on March 22, 2017, the standard will change to 12 weeks before the expected date of delivery. Maternity benefits must end by 17 weeks after the expected or actual date of delivery, whichever is later.¹⁸

Although neither pregnancy nor childbirth is considered an illness, a woman who experiences complications with respect to either may request and be entitled to EI sickness benefits. In order to receive EI sickness benefits related to pregnancy or childbirth, which may be payable for a maximum of 15 weeks, a claimant is among other things required to produce a medical certificate that attests to her incapacity to work and that states the probable duration of said incapacity. For example, a pregnancy that is terminated within the first 19 weeks is considered an illness for the purposes of the EI Act.¹⁹

While the exact amount of the benefits for a specific applicant cannot be determined before the application has been processed, the basic rate for calculating EI benefits in most cases is 55% of a person's average insurable weekly earnings, up to a maximum amount. As of 1 January 2017, the maximum yearly insurable earnings amount is \$51,300, which is equivalent to a maximum of \$543 per week.²⁰

1.1.3 QUEBEC'S SAFE MATERNITY EXPERIENCE PROGRAM

In Canada, Quebec is the only jurisdiction to offer wage replacement for provincially regulated employees during the period of preventive withdrawal connected with pregnancy and childbirth. Under Quebec's *Act Respecting Occupational Health and Safety* (OHS Act), a pregnant or nursing employee may request to be reassigned to other duties when she has obtained a medical certificate stating that her "working conditions may be physically dangerous to her unborn child or to herself by reason of her pregnancy" or that her "working conditions involve risks for the child she is breast-feeding." If, however, reassignment is not possible, the pregnant or nursing employee has the right to take a precautionary leave of absence and receive income replacement benefits during this time.²¹

Income replacement benefits are provided by Quebec's Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST) in accordance with the Safe Maternity Experience program, which has its basis in the OHS Act. Under the program, a worker on preventive withdrawal is entitled to full remuneration for the first five working days after stopping work, and to 90% of her net salary thereafter for the days that she would normally have worked were it not for the health or safety risk, up to a maximum insurable salary. The maximum insurable salary is currently set at \$72,500. These benefits are in addition to maternity and other benefits provided to new parents by the Quebec Parental Insurance Plan (QPIP).

Income replacement benefits under Quebec's Safe Maternity Experience program are payable until:

- the beginning of the work reassignment;
- the cessation of the hazard that justified the preventive withdrawal;
- the fourth week preceding the week of the expected date of delivery if the worker is eligible for benefits under the QPIP; or
- the end of the nursing period.

Employees who are not eligible for the QPIP will continue to receive income replacement benefits from CNESST until the date of delivery, if a request is made.

The following employees, however, are not eligible to receive income replacement benefits under Quebec’s Safe Maternity Experience program: women working outside the province of Quebec, women working for an employer that does not have an establishment in Quebec, employees of businesses under federal jurisdiction, unincorporated self-employed workers, domestic help working for an individual, students in training, and volunteer workers.²²

1.2 RECENT FEDERAL GOVERNMENT INITIATIVES

Budget 2017 proposed a series of measures to expand EI benefits in order to offer more flexibility to families, indicating that “[e]very Canadian family is different – and has different needs when it comes to how they manage work and family responsibilities.”²³ Among other measures, Budget 2017 proposed to amend the EI Act to allow women to claim EI maternity benefits up to 12 weeks before their date of delivery, instead of eight weeks, if they so choose.²⁴ This change will be enacted upon the coming into force of Division 11 of Part 4 of Bill C-44, as mentioned in section 1.1.2 of this Legislative Summary.

In the fall of 2016, the federal government conducted consultations with Canadians to seek their views on making certain EI special benefits, including maternity benefits, more flexible and inclusive. Among those who responded, 64% supported the approach of allowing women to access earlier EI maternity benefits where there are work-related health and safety risks and the employer is unable to provide accommodation, even if this would result in fewer weeks of benefits post-birth. In addition, 56% of participants indicated that they would like the federal government to raise awareness of this issue and encourage employers to modify workplace tasks or conditions where reasonably feasible.²⁵

2 DESCRIPTION AND ANALYSIS

2.1 PREAMBLE

The preamble to Bill C-243 sets out the legislation’s justification. Using the principle of gender equity as its basis, the preamble indicates that pregnancy should not act as a barrier to full participation in the workforce, adversely impact a woman’s employment, inflict financial hardship, or compromise the pursuit of her chosen career. Further, the preamble indicates that, in 2014, women represented 47.3% of the labour force, up from 45.7% in 1999 and 37.1% in 1976, with more women currently participating in skilled trades and other non-traditional occupations that have potentially hazardous work environments.

While the preamble acknowledges Quebec’s Safe Maternity Experience program, it also indicates that Canada, unlike other jurisdictions, lacks a “long-term comprehensive national strategy” to accommodate pregnant and nursing employees in the workplace and to financially support them if they are unable to work.

2.2 NATIONAL MATERNITY ASSISTANCE PROGRAM

Clause 1 establishes the short title of Bill C-243, namely, the National Maternity Assistance Program Strategy Act.

Clause 2 specifies that the minister referred to in the bill is the Minister of Employment and Social Development.

Clause 3 requires the minister, in collaboration with other federal ministers, to conduct consultations on the development of a strategy to implement a national maternity assistance program, which would have for objective supporting women who are unable to work by reason of their pregnancy and whose employer cannot accommodate them. Representatives of the provincial and territorial governments responsible for employment, along with other relevant stakeholders, are invited to participate in the consultations.

Further, the consultations should include an assessment of the following:

- the current demand for a national maternity assistance program;
- the adequacy of the current federal and provincial programs for pregnant women;
- the financial costs, the potential social and economic benefits, and the legal, constitutional or jurisdictional implications associated with the implementation of a national maternity assistance program; and
- the different types of workplaces in Canada and the impact of a national maternity assistance program on workplace gender equality (this stipulation was added by HUMA at committee stage).

Consultations must be held within a year after Bill C-243 comes into force.

Clause 4 provides that, within three years after Bill C-243 comes into force, the minister must table a report before each House of Parliament setting out the conclusions of the consultations. This report must be posted by the minister on the departmental website within 30 days after it is tabled. Prior to its amendment by HUMA at committee stage, clause 4 required the minister to table the report within two years of the coming-into-force date.

3 COMMENTARY

Initial commentary, which included references to the amendments to the EI Act found in the first-reading version, suggested that Bill C-243 received the support of various trade organizations, including Canada's Building Trades Unions (CBTU), the Canadian Welding Association (CWA) and the Canadian Apprenticeship Forum.²⁶ In a news release, CBTU welcomed measures to increase the flexibility of EI maternity benefits and to develop a national maternity assistance program strategy, emphasizing their significance for women with careers in the skilled trades.²⁷ Similarly, the CWA praised the bill as "proactive" and "beneficial to both the workers and to industry," explaining that, while welding is a profession subject to occupational health and safety standards, there may be certain working conditions within the skilled trades that would require early access to EI maternity benefits.²⁸

Bill C-243 also received support from women's advocacy organizations, such as the National Council of Women of Canada; the Canadian Coalition of Women in Engineering, Science, Trades and Technology (CCWESTT); the Canadian Federation of University Women; and the Office to Advance Women Apprentices.²⁹ CCWESTT endorsed the bill with the caveat that “this should be the first step towards a more comprehensive system and national strategy to ensure that women who want to have a family and remain active in the workplace can do it in a safe manner and without discrimination.” CCWESTT further explained that maternity is one of the barriers that women, especially those in under-represented workplaces, encounter daily.³⁰

However, initial commentary also suggested that there were some reservations with regards to the provisions in the first-reading version of the bill that sought to shift the time period associated with the EI maternity benefit entitlement of pregnant workers (explained in the appendix to this Legislative Summary), and concerns about potential negative repercussions of these changes on workplace measures.

Senior officials from the Department of Employment and Social Development, for example, cautioned that allowing all 15 weeks of EI maternity benefits to be taken before the expected date of delivery could lead to an income support gap for women whose children arrive late. They also indicated that this measure would deviate from one of the policy objectives of EI maternity benefits, namely, providing mothers with paid leave to recuperate after childbirth.³¹ UNICEF Canada also cautioned that curtailing post-birth maternity assistance would not be in the best interests of children, indicating that “[m]aximizing time at home with a newborn child in the first year of life is an important part of the bonding and child development process.”³²

Finally, with respect to workplace measures, senior departmental officials pointed out that providing wage replacement during the period of preventive withdrawal could implicitly signal to employers a reduced onus with respect to occupational health and safety issues.³³

NOTES

1. [Bill C-243, An Act respecting the development of a national maternity assistance program strategy](#), 1st Session, 42nd Parliament. See also House of Commons, [Debates](#), 1st Session, 42nd Parliament, 26 February 2016, p. 1454.
2. House of Commons, [Debates](#), 1st Session, 42nd Parliament, 17 May 2016, pp. 3504–3506.
3. [Bill C-243, An Act respecting the development of a national maternity assistance program strategy and amending the Employment Insurance Act \(maternity benefits\)](#), 1st Session, 42nd Parliament (first reading version, 26 February 2016).
4. House of Commons, [Debates](#), 1st Session, 42nd Parliament, 26 October 2016, pp. 6169–6170.
5. [Employment Insurance Act](#), S.C. 1996, c. 23 [EI Act].
6. House of Commons, Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities [HUMA], [Bill C-243, An Act respecting the development of a national maternity assistance program strategy and amending the Employment Insurance Act \(maternity benefits\)](#), Sixth Report, 1st Session, 42nd Parliament, 3 May 2017.

7. House of Commons, "[Royal Recommendation for a Bill](#)," *Compendium of Procedure*.
8. House of Commons, [Debates](#), 1st Session, 42nd Parliament, 6 December 2016, p. 7687.
9. House of Commons, [Debates](#), 1st Session, 42nd Parliament, 29 May 2017, p. 11559.
10. [Canada Labour Code](#), R.S.C. 1985, c. L-2.
11. [Canada Labour Code](#), s. 132. See also Government of Canada, [Information on Occupational Health and Safety – Pamphlet 5: Pregnant and nursing employees](#) and [Information on Occupational Health and Safety – Pamphlet 1: Summary of Part II of the Canada Labour Code](#).
12. [Canada Labour Code](#), ss. 204–205. See also Government of Canada, [Information on labour standards – Pamphlet 5: Maternity-related reassignment and leave, maternity leave and parental leave, Part III of the Canada Labour Code \(Labour standards\)](#) and [Information on labour standards #1: Summary of Part III of the Canada Labour Code](#).
13. Government of Canada, [Information on Occupational Health and Safety – Pamphlet 5: Pregnant and nursing employees](#).
14. See, for example, [Occupational Health and Safety Regulations](#), NWT Reg 039-2015, ss. 315 and 345; and [Occupational Health and Safety Regulations](#), Nu Reg 003-2016, ss. 315 and 345.
15. [An Act Respecting Occupational Health and Safety](#), CQLR, c. S-2.1, ss. 40–48.
16. [Canadian Human Rights Act](#) [CHRA], R.S.C. 1985, c. H-6, s. 3.
 Regarding provincial and territorial human rights legislation, see, for example, [Alberta Human Rights Act](#), RSA 2000, c. A-25.5, s. 44(2); and [Human Rights Act](#), SNWT 2002, c. 18, s. 5(2).
 For the purpose of the CHRA, the Canadian Human Rights Commission has defined the term “undue hardship” as existing when factors such as safety, health or cost make the employer’s burden too high. See Canadian Human Rights Commission, [Pregnancy and Human Rights in the Workplace: A Guide for Employers](#), 2010.
17. Government of Canada, [Employment Insurance maternity and parental benefits](#) and [Digest of Benefit Entitlement Principles: Chapter 12 – Maternity benefits](#).
18. EI Act, ss. 12(3)(a), 22(2), 152.04(2) and 152.14(1)(a). See also [Bill C-44, An Act to implement certain provisions of the budget tabled in Parliament on March 22, 2017 and other measures](#), 1st Session, 42nd Parliament (S.C. 2017, c. 20), ss. 234 and 244(1).
19. Government of Canada, [Digest of Benefit Entitlement Principles: Chapter 12 – Section 3](#) and [EI Sickness Benefit – Overview](#).
20. Government of Canada, [EI Maternity and Parental Benefits – How much could you receive](#) and [EI Sickness Benefit – How much could you receive](#).
21. [An Act Respecting Occupational Health and Safety](#), ss. 40–48.
22. Government of Quebec, “[For a Safe Maternity Experience program](#),” *Services Québec – Citoyens*; and Commission des normes, de l’équité, de la santé et de la sécurité du travail, [Salaire maximum assurable : annuel et hebdomadaire](#) [available in French only]. See also Travail, Emploi et Solidarité sociale, “[What is the Québec Parental Insurance Plan?](#),” [Québec Parental Insurance Plan](#); and Government of Quebec, “[Québec Parental Insurance Plan](#),” *Services Québec – Citoyens*.
23. Government of Canada, [Building a Strong Middle Class](#), Budget 2017, 22 March 2017, p. 63.
24. Ibid.

25. Government of Canada, [Executive summary: Employment Insurance Special Benefits online consultations](#). See also Government of Canada, Employment and Social Development Canada, [“Consulting with Canadians to introduce more flexible and inclusive support for parents and family caregivers,”](#) News release, 6 October 2016.
26. Kelsey Curtis, [“Trade groups endorse maternal leave proposal,”](#) *Whig-Standard* [Kingston, Ont.], 27 April 2016. See also Bill C-243, [Endorsements](#).
27. American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), Building and Construction Trades Department, [“Canada’s Building Trades Unions and Build Together pleased to support Bill C-243,”](#) News release, 17 May 2016.
28. Canadian Welding Association, [“CWA applauds vote on Bill C-243,”](#) News release, 28 October 2016.
29. Curtis (2016). See also Bill C-243, [Endorsements](#).
30. Bill C-243, [Endorsements](#).
31. HUMA, [Evidence](#), 1st Session, 42nd Parliament, 23 March 2017, 1225 (Mr. Andrew Brown, Executive Director, Employment Insurance Policy, Skills and Employment Branch, Department of Employment and Social Development).
32. UNICEF Canada, [A UNICEF Canada Submission Regarding Bill C-243, The National Maternity Assistance Program Strategy Act](#), March 2017, p. 3.
33. HUMA (2017), 1230 (Brown).

APPENDIX – DESCRIPTION AND ANALYSIS OF CLAUSES 5 TO 7 OF BILL C-243, AS WRITTEN BEFORE THEIR DELETION FROM THE BILL

This section contains a description and analysis of clauses 5 to 7 of Bill C-243, An Act respecting the development of a national maternity assistance program strategy, as they read in the first-reading version of the bill.¹ These provisions were deleted from the bill by the House of Commons Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities in its 3 May 2017 report to the House of Commons.²

NATIONAL MATERNITY ASSISTANCE PROGRAM

Clause 5 provides that, within three years of the tabling of the first report, and subsequently every three years, the minister must prepare a report setting out his or her conclusions and recommendations with respect to the national maternity assistance program strategy. This report must be tabled before each House of Parliament within 15 sitting days of its completion. The report must be posted by the minister on the departmental website within 30 days after it is tabled.

EMPLOYMENT INSURANCE ACT

Clauses 6 and 7 of Bill C-243 amend the *Employment Insurance Act* by adding sections 22(2.1) and 152.04(2.1) to allow for the shifting of the time period associated with the maternity benefit entitlement of pregnant workers, including those who are self-employed. Specifically, under new sections 22(2.1) and 152.04(2.1), the weeks for which maternity benefits may be paid can be shifted if:

- the pregnant worker has obtained a medical doctor's certificate attesting to her inability to perform her employment duties because these may pose a risk to her health or to that of her unborn child; and
- in the case of an employee, her employer is unable to modify her job functions or assign her to another job or, in the case of a self-employed worker, she is unable to modify her job functions.

In accordance with new sections 22(2.1) and 152.04(2.1), if the above-noted conditions are met, the weeks for which maternity benefits may be paid can be shifted to begin 15 weeks before the expected date of delivery. The end date associated with the payment of maternity benefits remains unchanged at 17 weeks after the expected or actual date of delivery, whichever is later.

NOTES

1. [Bill C-243, An Act respecting the development of a national maternity assistance program strategy and amending the Employment Insurance Act \(maternity benefits\)](#), 1st Session, 42nd Parliament (first reading version, 26 February 2016).

2. House of Commons, Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities, [*Bill C-243, An Act respecting the development of a national maternity assistance program strategy and amending the Employment Insurance Act \(maternity benefits\)*](#), Sixth Report, 1st Session, 42nd Parliament, 3 May 2017.