

# How to Audit Your Maternity Leave Policy



Employment standards laws of all jurisdictions allow employees to take unpaid leave to give birth. However, maternity leave (aka pregnancy leave) rules vary by jurisdiction. This creates compliance challenges for HR directors, particularly if your organization operates in more than one province. Here are the 10 things to check to vet your own maternity leave policy—or create a new policy if you don't already have one.

## **1. Minimum Employment Service Required for Eligibility**

In most provinces, employees must have a minimum amount of time with their current employer to qualify for maternity leave. However, there are no minimum employment requirements in 5 jurisdictions, meaning employees can take maternity leave starting on the first day they show up for work, if not sooner.

### **Minimum Employment for Maternity Leave Eligibility**

- (1) In Ontario, the due date can't fall earlier than 13 weeks after their first day of employment
- (2) In PEI, the minimum 20 weeks need not be consecutive but must have occurred in the past 52 weeks

## **2. When Maternity Leave Must Start**

Employees must take maternity leave within a window that starts on a specified number of weeks from the expected birth date and runs up to the expected due date or actual birth date. As you can see, Alberta has the longest waiting period at 12 weeks from the due date.

### **Earliest Date Maternity Leave Can Start (from Due Date in weeks)**

0  
AB  
0  
Fed, BC, NB, PEI, SK

0  
NS, QC  
0  
MB, NL, ON, NWT, NU, YT

### 3. Whether Employers Can Require Employees to Start Maternity Leave Early

In Alberta, New Brunswick, Nova Scotia, Prince Edward Island, Quebec, Saskatchewan and the 3 territories, employers can actually kick pregnant employees out the door and make them start maternity leave early if they have reasonable concerns that a pregnant person can't perform the job or that the pregnancy will significantly interfere with the employee's job duties. Limits apply, depending on the jurisdiction. Thus, in the 3 territories, the employer must get the government's approval to force a pregnant employee to start maternity leave early. In Quebec, the employer's kickout rights don't kick in until the employee is 6 weeks from her due date.

### 4. How Long Standard Maternity Leave Can Last

Standard maternity leave duration varies between up to 16 weeks and up to 19 weeks, with 17 weeks being the most common leave length:

#### How Long Standard Maternity Can Last (in weeks)

0  
AB, NS  
0  
Fed, BC, MB, NB, NL, ON, PEI, NWT, NU, YT  
0  
QC  
0  
SK

### 5. Potential Extensions

In addition to standard maternity leave duration, 8 jurisdictions provide for extensions in case of late births or complications in the pregnancy or birth:

- Federal: i. If employee isn't confined for giving birth by the end of 17 weeks, leave is extended until the confinement date; and ii. leave is also extended if the child for whom leave is taken is hospitalized for as long as the child remains in the hospital up to the point where the entire leave reaches 52 weeks;
- BC/NWT/Nunavut: Extension of up to 6 weeks if the employee can't return to work after the leave ends for reasons related to the birth or termination of the pregnancy;
- PEI: Employee gets extension of: i. Up to 6 weeks after the birth date if the actual birth date is later than expected; and ii. Up to 5 weeks if the new child has a physical, psychological or emotional condition requiring an additional period of parental care, provided that employee submits an application and provides verification to the employer;
- Quebec: i. If there's a risk of termination of pregnancy or the health of the mother or unborn child, employee gets extra leave for duration of problem; ii. Extension of at least 2 weeks after delivery if delivery occurs after expected date; iii. Extension of up to 3 weeks if there's a termination of pregnancy before the beginning of the 20th week before the expected date of delivery,

unless a medical certificate attests that the employee needs an even longer extended leave; and iv. Up to 18 weeks if termination of pregnancy occurs in or after the 20th week;

- Saskatchewan: i. At least 6 weeks after birth date if actual date of birth is later than estimated date of birth; and ii. Up to 6 more weeks if employee can't return to work for medical reasons to after maternity leave expires;
- Yukon: Up to 6 weeks after the birth or termination of pregnancy if the employee can't return to work due to the pregnancy.

## **6. Leave Notification Requirements**

Employees must give employers written notification of their intent to take maternity leave and its expected duration within a specified number of weeks in advance, unless it's impossible to provide such notification, in which case the employee must provide notification as soon as possible. Four weeks' notice is the rule in most jurisdictions, but there are exceptions:

- 2 weeks: Ontario and Newfoundland;
- 3 weeks: Québec; and
- 6 weeks: Alberta.

## **7. Required Verification of Leave**

Upon notifying employers of their intent to take leave, employees must provide certification from a nurse practitioner or other medical professional that states that they're pregnant and gives the expected date of birth. Exception: In Alberta, BC, New Brunswick, Nova Scotia, Ontario, Saskatchewan and the 3 territories, verification from a medical professional is required only if the employer requests it.

## **8. Early Return from Maternity Leave**

Employees generally must list their return date in written notification of intent to take maternity leave. If there's no return date given, the employer can assume the leave will continue for the maximum duration allowed under the province's employment standards laws. Employees who want to return early must provide written notification of the revised return date by a specified number of weeks before that return date, typically 4 weeks.

## **9. Employees Keep Seniority During Maternity Leave**

Employers may not subtract time spent on maternity or other forms of leave required by employment standards laws against employees' seniority or entitlement to benefits. Several jurisdictions, including Federal, BC, Manitoba, Ontario, Saskatchewan and Yukon take things a step further by providing that employees continue to accrue seniority while they're on leave. However, gradations may apply:

- In Ontario, time on maternity leave doesn't count toward completion of the employee's probationary period; and
- In Manitoba, leave time counts toward pensions and benefits but not vacation accrual.

## **10. Ban on Reprisal and Retaliation**

Employers aren't allowed to terminate, demote, cut the pay or benefits or take other adverse employment action against employees for taking or asking about their maternity leave rights.