

Maternity & Parental Leave: The 10 Things to Include in Your Leave Policy



WHAT'S AT STAKE

Giving parents more time off to balance work and family obligations is probably the hottest trend in HR, at least as far as new lawmaking goes. In the past year, every jurisdiction has (or is in the process of) changed its employment standards laws (ESA) to enhance employees' family and caregiving rights, starting with maternity and parental leave. So, if you haven't revisited your maternity and parental leave policies recently, you may be out of compliance. And if you don't already have written policies, you need to create them ASAP. In either case, here are the 10 things you need to address.

Note: The following assumes you provide the minimum leave required by your jurisdiction's ESA. Keep in mind that you may always offer more generous terms than the law requires, e.g., paid or longer leave time.

Defining Our Terms: Maternity v. Pregnancy Leave

Leave for female employees to give birth is part of all employment standards laws, the names differ. Most jurisdictions call it "maternity leave" (as does this article); but in NL, NS, ON, NWT and NU, it's called pregnancy leave.

1. Policy Statement

Acknowledge that employees have the right to take unpaid maternity and parental leave not simply because the ESA requires it but because your organization is committed to ensuring that nobody has to forfeit their job to give birth or adopt a child.

2. Eligibility Criteria

List eligibility criteria, i.e., minimum service time employees must have to qualify for maternity and parental leave in your jurisdiction (see Table 1 below). Exception: There is no minimum requirement in BC, New Brunswick, Nova Scotia and Québec; in other words, *all* employees become eligible for maternity and parental leave once they start work.

Table 1: Eligibility Requirements by Jurisdiction

Jurisdiction	Minimum Service Time Required for Maternity & Parental Leave
Federal	6 consecutive months with same employer

Alberta	90 days with same employer
Manitoba	7 consecutive months with same employer
Newfoundland	20 consecutive weeks immediately before birth/adoption date
Ontario	13 weeks
Prince Edward Island	20 of last 52 weeks
Saskatchewan	13 consecutive weeks
Northwest Terrs. & Nunavut	12 consecutive months
Yukon	12 continuous months with same employer

3. Grounds for Leave

The grounds for taking maternity leave are being female and pregnant. Parental leave, on the other hand, can be taken by either a male or female who wants to be home to greet and care for a new child. The 3 potential triggers:

- Birth of a child;
- Adoption; or
- End of a maternity leave—in effect, an extension of the leave taken immediately after the maternity leave ends.

4. How Long Leave Can Last

The Recent Maternity & Parental Leave Extensions

Recent EI caregiving benefits enhancements took effect allowing for earlier entitlement to maternity benefits and shared parental benefits at either the current 55% of average weekly earnings over 35 weeks or 33% (up to \$326 per week) over 61 weeks. Maximum federal maternity and parental leave was also extended to enable employees to take advantage of the new EI benefits. And in the past 2 years, every jurisdiction extended (or is in the process of extending) its own ESA leave rules to correspond with the federal changes.

List the maximum duration of each leave in your jurisdiction. Maternity leave ranges from 16 weeks (Alberta and Nova Scotia) to 19 weeks (Sask.). Maximum parental leave has nearly doubled in the last 2 years to somewhere in the vicinity of 61 weeks. Keep in mind that most jurisdictions allow for leave extensions in certain situations, e.g., where the due date proves later than expected or there are complications with the birth or pregnancy. In addition, maternity and parental leave can be combined:

- A female employee can take both maternity and parental leave for the same birth; and
- Both parents can take parental leave for the same birth or adoption.

Table 2: Maximum Duration of Maternity, Parental & Combined Leave by Jurisdiction (in Weeks)

Jurisdiction	Maternity Leave	Parental Leave	Combined Leave for Same Birth or Adoption
Federal	17	63	>1 or 2 parents: 78 >2 parents: 63
Alberta	16	62	>1 or 2 parents: 78 >2 parents: 62
BC	17	61	78
Manitoba	17	63	80
New Brunswick	17	62	>1 or 2 parents: 78 >2 parents: 62
Newfoundland	17	61	78

Nova Scotia	16	77	77
Ontario	17	63	78
PEI	17	62	78
Quebec	18	70	88
Saskatchewan	19	>mother: 59 >other parent: 63	78
NWT/NU(1)	17	37	52
Yukon(2)	17	37	37

Notes

(1) Northwest Territories has tabled legislation extending parental leave to 61 weeks and total combined leave to 78 weeks
(2) Yukon has tabled legislation extending parental leave to 62 weeks and total combined leave to 78 weeks

5. When Leave Can Be Taken

State how many weeks from the due date employees must be to start maternity leave. The starting date for parental leave is within a specific amount of time, typically 78 weeks (18 months) from the date of birth or adoption. Exception: Make it clear that employees taking parental leave after going on maternity leave for the same birth must start the parental leave right after the maternity leave ends.

Table 3: Maternity & Parental Leave Start Dates

Jurisdiction	Maternity Leave (weeks before due date)	Parental Leave (time from birth or adoption date)
Federal	13	78 weeks
Alberta	13	78 weeks
BC	13	78 weeks
Manitoba	17	18 months
New Brunswick	13	78 weeks
Newfoundland	13	35 weeks
Nova Scotia	13	18 months
Ontario	17	78 weeks
PEI	17	52 weeks
Quebec	18	70 weeks
Saskatchewan	12	52 weeks
NWT/NU	17	1 year
Yukon	Not specified	Must be completed within 52 weeks

Most jurisdictions (BC, MB, NL, ON are the exceptions) give employers the right to make the employee start maternity leave earlier if it determines that her pregnancy poses a danger or unreasonably interferes with the job. Keep in mind that forcing a pregnant employee to take maternity leave raises a bright red flag under discrimination laws. So, if you're in one of the jurisdiction that allows employers to initiate maternity leave, make sure your policy carefully tracks the language of the ESA.

6. How Leave Can Be Taken

Make it clear that maternity and parental leave must be taken over a continuous period and may not be broken into incremental pieces. Exception: A few

jurisdictions—FED, NS, QC—allow employees to interrupt leave and resume it later, e.g., where a baby is hospitalized for a sustained period. As noted above, a mother taking maternity and parental leave for the same birth must begin the latter right after the former ends.

7. Employee Notification Requirements

Absent an emergency, require employees to notify you of their intent to take leave within a stated deadline (see Table 4 below) in a written notice listing:

- The reasons for taking leave;
- The expected start date; and
- The expected return date.

Also indicate that employees may take leave without notice in an emergency if they provide notice as soon as possible after leave begins.

Table 4: Maternity & Parental Leave Notification Deadline

Jurisdiction	Require Employee Notice for Maternity & Parental Leave (weeks before due date or adoption date)
Federal	4
Alberta	6
BC	4
Manitoba	4
New Brunswick	2
Newfoundland	2
Nova Scotia	4
Ontario	2
PEI	4
Quebec	3
Saskatchewan	4
NWT/NU	4
Yukon	4

8. Employee Verification Requirements

Make employees provide whatever medical certification is required for taking leave. Most jurisdictions give employers the right to request written verification from a doctor, nurse or other healthcare practitioner certifying pregnancy and listing the due date, or in the case of adoption, an adoption agency listing the adoption date. In NB, PEI, QC, SK and YK, such certification is required automatically, even if the employer doesn't ask for it. With a few exceptions—BC, NB, NS, —medical certification isn't required for parental leave.

9. Reinstatement Deadline & Process

Describe the timing and procedure for reinstatement of employees after maternity and parental leave. Most jurisdictions let employees come back early if they give written notice by a specified time—typically 4 weeks.

10. Employee Reinstatement Rights

Make it clear that employees returning from maternity and parental leave will be reinstated to their previous jobs or a comparable position in terms of pay and benefits, and with no loss in seniority. In most jurisdictions, employees also continue to accrue benefits, vacation and service time while they're on leave.