

# Maternity/Pregnancy Leave Compliance Game Plan



Maternity leave was invented so that women would no longer have to make a choice between having a baby and having a job. Maternity, aka pregnancy leave, is now a fundamental part of employment standards laws in all parts of the country. However, the [specific requirements for maternity leave vary by jurisdiction](#). This creates compliance challenges for HR directors, particularly if your organization operates in more than one province. Here's a 12-step game plan for implementing a legally sound [maternity leave policy](#) and ensuring compliance with the employment standards rules of each jurisdiction in which you operate.

## **Step 1. Ensure Employees Are Eligible for Maternity Leave**

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 (FED, BC, NB, NS, QC), meaning employees can take maternity leave starting on the first day they show up for work, if not sooner.

**Table 1. Minimum Employment for Maternity Leave Eligibility**

None (all employees eligible)	90 Days 13 Weeks	20 Weeks	7 Months 12 Months
FED, BC, NB, NS, QC	Alberta	Ontario(1), Saskatchewan	Newfoundland, PEI(2)

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.

**Source:** Bongarde Media

## Step 2. Ensure Employees Have Proper Grounds to Take Maternity Leave

Grounds for taking maternity leave under employment standards are straightforward: Employees must be 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 grounds:

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

## Step 3. Require Employees to Take Maternity Leave During Appropriate Window

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.

**Table 2. Earliest Date Maternity Leave Can Start (from Due Date)**

	12 Weeks	13 Weeks	16 Weeks	17 Weeks
Alberta	Federal, BC, New Brunswick, PEI, Saskatchewan	Nova Scotia, Québec	Manitoba, Newfoundland, Ontario, NW Terrs, Nunavut, Yukon	

**Source:** Bongarde Media

## Step 4. Determine Whether You Can Require Employees to Start Maternity Leave Early

It's generally up to pregnant employees to decide when within the window they want to begin their maternity leave. However, in Alberta, New Brunswick, Nova Scotia, Prince Edward Island, Québec, Saskatchewan, and the 3 territories, employers can actually require a pregnant employee to start maternity leave early if they have reasonable concerns that a person can't perform the job while pregnant or that the pregnancy will materially interfere with the employee's job duties. Limits apply, depending on the jurisdiction:

- Under Federal law, the employer may force early maternity leave only if there are no appropriate alternative jobs she can do;
- In Saskatchewan, employers must first try to restructure the employee's duties so that she can do the job while pregnant;
- In the 3 territories, the employer must get the government's approval to force a pregnant employee to start maternity leave early;
- In Québec, the employer's kickout rights don't kick in until the employee is 6 weeks from her due date; and
- Two jurisdictions (FED, PEI) stipulate that the employer has the burden of proving that the employee can't perform the essential functions of a job while pregnant.

## Step 5. Ensure Maternity Leave Doesn't Exceed Maximum Duration

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

**Table 3. How Long Standard Maternity Can Last (up to)**

16 Weeks	17 Weeks	18 Weeks	19 Weeks
Alberta, Nova Scotia	Federal, BC, Manitoba, New Brunswick, Newfoundland, Ontario, PEI, NW Terrs, Nunavut, Yukon	Québec	Saskatchewan

**Source:** Bongarde Media

## Step 6. Allow for Maternity Leave Extensions in Event of Pregnancy Complications

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:** If the 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;
- **Québec:** 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 20<sup>th</sup> 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 20<sup>th</sup> week;
- **Saskatchewan:** 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.

## Step 7. Ensure Combined Maternity & Parental Leave Time Doesn't Exceed Maximum Duration

Female employees can combine their maternity leave with parental leave for the same birth. In addition, more than one employee may take parental leave for the same birth or adoption. Time limits for combined maternity and parental leave vary by

jurisdiction.

**Table 4. Maximum Duration of Parental Leave**

Jurisdiction	Single Employee Also Taking Maternity Leave	Not Single Employee Also Taking Maternity Leave	2 Employees for Same Birth or Adoption
Federal	63 weeks	71 weeks	86 weeks
Alberta	62 weeks	Not specified	62 weeks
British Columbia	63 weeks	78 weeks	<b>Shared Parental Leave Standard:</b> Up to 40 weeks with no parent taking more than 35 weeks, with EI benefits at 55%. <b>Extended:</b> Up to 69 weeks but with no parent taking more than 61 weeks, with EI benefits at 33%.
Manitoba	63 weeks	63 weeks	N/A
New Brunswick	62 weeks	78 weeks	62 weeks
Newfoundland	61 weeks	78 weeks	N/A
Nova Scotia	61 weeks	77 weeks	62 weeks
Ontario	63 weeks	78 weeks	N/A
Prince Edward Island	62 weeks	78 weeks	N/A
Québec	65 weeks	85 weeks	N/A
Saskatchewan	71 weeks	78 weeks	86 weeks
North West Territories	61 weeks	78 weeks	86 weeks
Nunavut	37 weeks	52 weeks	86 weeks
Yukon	63 weeks	71 weeks	N/A

**Source:** Bongarde Media

When taken by the same employee, parental leave must generally begin immediately after maternity leave ends, unless the parties agree otherwise. The 86 weeks for shared parental leave typically begin 13 weeks before the birth or adoption date.

## **Step 8. Require Employee to Provide Appropriate Notification of Maternity Leave**

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:**

## **Step 8. Require Employees to Provide Appropriate Verification of Maternity 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.

## **Step 10. Allow for 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.

## **Step 11. Count Maternity Leave Time toward Employees' Seniority**

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.

## **Step 12. Ensure Proper Reinstatement from Maternity Leave**

Employers must reinstate employees returning from maternity, parental, and other extended employment standards law leaves leave 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. Be sure that you're familiar and compliant with the reinstatement and continuing benefits requirements of your particular province.

## **Step 13. Don't Take Reprisals Against Employees for Exercising their Maternity Leave Rights**

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.