Work-Life Balance: Do Employees Keep Accruing Group Benefits When They Go on Maternity & Parental Leave?

One of the principal challenges of maternity (aka, pregnancy) and parental leave is sorting out the employee's right to benefits during the absence. Rules vary, depending on the type of benefit involved, but the general rule is that employers can't change the terms and conditions of employment, just because an employee is on pregnancy or parental leave. This may be expressly stated under employment standards and/or implied under human rights law.

1. **Group Benefit Plans**

Let's start with group benefit plans, including savings plans such as RRSPs or RPPs. Based on the rule above, employers can't cut off the right to benefits or coverage during the leave, but the employee can. In other words, it's up to the employee to determine whether he or she wants her benefit coverage to continue during pregnancy or parental leave. There are 2 approaches:

Opt-In: In Nova Scotia and Prince Edward Island, employees must *opt in* to continued benefit coverage. Under an opt-in system, employees must notify the employer of their decision to continue coverage to avoid having their coverage discontinued.

Opt-Out: In every other jurisdiction, coverage is presumed to continue during maternity or parental leave unless the employee specifically opts out of coverage. There are 2 basic methods of opting out:

- In Ontario and under the *Canada Labour Code*, employees may opt out of benefit coverage by notifying their employer;
- In all other jurisdictions, it's the employee payment of any employee share that determines whether groups benefits must be continued during a pregnancy or parental leave.

Collecting Employee's Share of Group Benefit Premiums

If coverage does continue, employers face the practical challenge of collecting the employee share of any group benefit premiums covering the leave period. Because collecting payments in real time *during* the leave can be burdensome for the employer and intrusive to the employee, there are 3 simpler alternatives the employer may want

to consider:

- Asking employees for payment in advance before their leave begins;
- Asking employees to provide post-dated cheques before their leave begins; or
- Collect the employees' share in arrears after their leave ends and they return to work.

The latter method is the simplest administratively, since the total premium amount owing is fixed and can be collected in payroll via a deduction at source. The downside of this method is the risk the employee won't return to work or be able to repay the amount owing even if the recovery is spread out over an extended period.

Payment in advance or via post-dated cheques involves not only more work but also potential difficulties in reconciling employee benefits. It's a best practice, for example, for employers to process group benefits through payroll, using the payroll journal entry to record any related employer costs. This allows payroll staff to reconcile the benefits processed in payroll against the premium invoices from the third-party carriers or providers concerned. This reconciliation is a fundamental control on employer benefit costs.

The problem is that many employers don't process payroll for employees on extended unpaid leaves, so this method can't be used to process benefits costs during pregnancy or parental leaves. Similarly, if an employee provides post-dated cheques to cover their share of group benefits premiums, these payments aren't typically run through payroll.

2. **Vacation Benefits**

Just like for group benefits, employers can't change the rules around vacations just because an employee is on an unpaid pregnancy or parental leave. But here the question is the actual vacation promise made by the employer. Is it to paid time off, i.e., 3 weeks of paid leave per year or is the promise to accrue vacation pay at 6%.

Language stating that the employee is entitled to X weeks of vacation "to be paid at the then current salary" is commonly found in contracts and offer letters. What the employer may not realize is that this language effectively means the employee is entitled to X paid vacation weeks during a vacation year that *includes* a pregnancy or parental leave. In other words, the employer's unwritten assumption that vacation accrues only during periods of active service turns out to be faulty.

Explanation: The problem with the above language is that it doesn't distinguish between active and inactive service. So, the employer who agrees to such language and then doesn't let an employee accrue vacation benefits during pregnancy or parental leave becomes vulnerable to unforeseen liability risks. The argument could be made that the employer is singling out maternity or parental leave for less favourable treatment, which at least on its face, is a form of family-status and/or sex discrimination banned by human rights laws.

Solution: All employment contracts with salaried employees should restrict the earning of paid vacation to periods of *active* employment. Potential discrimination risk is less of a problem for hourly paid employees whose vacation pay is calculated as a percentage of earnings from active service.

The Same Problem May Apply to Savings Plans

Fact 1: Employers frequently promise pension benefits based on contacted salary amounts, rather than earnings from active employment, e.g., 8% of annual salary versus 8% of earnings during active service.

Fact 2: Federal, BC, SK, ON, QC and PE employment standards laws explicitly list pensions in the benefits that can't be compromised because of pregnancy or parental leave.

Result: The right to employer RRSP contributions or pension credits may still be owing during pregnancy or parental leave.

Solution: Where possible, employers should limit savings plan contributions to periods of *active service*. However, registered pension contributions may be also subject to the terms of the pension document itself or to a collective agreement and changing these might not be easy.

Payroll & Parental/Maternity Leave Rules

Every employment standards jurisdiction in Canada requires employers to give unpaid maternity, parental and or adoption leave. The chart below shows the basic rules for these.

PARENTAL & MATERNITY LEAVE RULES BY JURISDICTION

Jurisdiction	Length of Prior Employment	Employee Notice	Length of Maternity Leave	Length of Parental Leave	Cap on Combined Total
Federal	6 months	4 weeks	17 weeks	63 weeks	78 weeks
BC	None	4 weeks	17 weeks	62 weeks	78 weeks
AB	90 days	6 weeks	16 weeks	62 weeks	78 weeks
SK(1)	13 weeks	4 weeks	18 weeks	37 weeks	Parental leave is only 34 weeks, if maternity/adoption leave has been taken
MB	7 months	4 weeks	17 weeks	63 weeks	
ON	13 weeks	2 weeks	17 weeks	63 weeks	78 weeks
QC	None	3 weeks	18 weeks	52 weeks	
NB	None	4 months/ 4 weeks	17 weeks	62 weeks	78 weeks
NS	1 year	4 weeks	17 weeks	52 weeks	
PE	20 weeks	4 weeks	17 weeks	35 weeks	52 weeks
NL	20 weeks	2 weeks	17 weeks	61 weeks	
YK(2)	12 months	4 weeks	17 weeks	37 weeks	
NT	12 months	4 weeks	17 weeks	37 weeks	52 weeks
NU	12 months	4 weeks	17 weeks	37 weeks	52 weeks

Notes

(1) On May 30, 2018, the Sask. Assembly tabled Bill 610 proposing extending leave: i. from 34 to 60 weeks if the employee has taken a maternity or adoption leave; and ii. from 37 to 62 weeks if the employee hasn't taken maternity or adoption leave

(2) Proposed Yukon legislation would extend parental leave to 62 weeks that must be continuous with maternity leave

Alan McEwen is a Vancouver Island-based HRIS/Payroll consultant and freelance writer with over 25 years' experience in all aspects of payroll. He can be reached at armcewen@shaw.ca or (250) 228-5280.