

Practice Resource

PREGNANCY AND PARENTAL LEAVE POLICY FOR PARTNERS

PREFACE

This policy was developed by the Law Society of British Columbia and updated in collaboration with the firms participating in the Law Society of British Columbia Justicia Project. The policy is intended as a tool to assist firms in developing internal policies on pregnancy and parental leave for their partners in British Columbia. The guide does not provide legal advice and is not meant to be the ultimate or ideal policy.

This policy is drafted in the context of a traditional law firm environment with partners, associates and other staff. Firms are encouraged to adapt and tailor their internal policy to reflect their own structure and culture.

This policy is intended to apply to equity partners and lawyers in similar ownership arrangements as equity partners in a law firm. All references to partners in this policy shall mean equity partners and lawyers in such similar ownership arrangements. Associates and others in an employment type relationship with the law firm are covered by the policy for associates that has also been prepared as part of this project.¹

Law firms have differing abilities to provide benefits and partners have differing needs. For smaller firms, certain aspects of the policy may be impractical or impossible to implement. Law firms will also need to ensure consistency between this policy and any contractual arrangements among their partners. For this reason, this policy is intended to serve as a guide only. However, law firms are strongly encouraged to adopt some form of written pregnancy and parental leave policy² for a number of reasons, including the following:

- Increasing transparency, objectivity, fairness and consistency in decision making;
- Providing an internal procedure to process requests for leaves and benefits;
- Enhancing a firm wide acceptance that pregnancy and parental leaves are positive practices;
- Showing that the firm's management is committed to advancing inclusiveness and diversity at the firm and to providing the appropriate supports to new parents;

¹ Each firm will need to determine whether this policy or the associate policy should apply for roles such as associate counsel or income partner depending on the nature of the arrangement and whether it is closer to an employment relationship versus that of an owner.

² A survey of 17 Vancouver firms, each having 50 or more lawyers, conducted by the Law Society of British Columbia in July 2013 indicates that over two-thirds of those firms have written pregnancy and parental leave policies for partners.

- Communicating the firm's commitment to potential recruits, lawyers of the firm and clients; and
- Ensuring that the firm complies with its legal obligations, including under the British Columbia *Human Rights Code*.³

The provincial *Employment Standards Act, R.S.B.C. 1996 c. 113* (the "ESA") does not apply to lawyers (including partners).⁴ The pregnancy and parental leave benefits outlined therein do, however, provide guidelines that may be instructive. As of March 2014, the ESA provides for up to 17 weeks of unpaid leave for birth mothers (pursuant to section 50 of the ESA) plus up to 35 consecutive weeks of unpaid parental leave beginning immediately after the end of the leave taken under section 50 or, for birth mothers who do not take leave under section 50, up to 37 consecutive weeks of unpaid parental leave. Birth fathers and adoptive parents are entitled to up to 37 consecutive weeks of unpaid parental leave. In particular circumstances, the ESA provides for additional periods of leave.⁵

Law firms also have legal obligations under provincial and/or federal human rights legislation and case law, and lawyers are bound by rules that promote human rights under the Law Society's *Code of Professional Conduct*. These obligations include a prohibition against discrimination on the basis of pregnancy, family status or gender, as well as a duty to accommodate to the point of undue hardship.⁶

Leaving aside the question of the length of time a partner may take for pregnancy and parental leave, there is also the question of remuneration during the leave. In this model policy, "pregnancy leave" refers to leave time available to birth mothers who are pregnant or have recently given birth and "parental leave" refers to leave time available to parents of either gender who have not taken pregnancy leave and are caring for a newborn or newly adopted child.

This policy recommends that an adoptive parent who is the child's primary caregiver be eligible to receive the same amount of overall paid leave time as would be available to a birth mother (albeit under the parental, rather than pregnancy leave, category).

Sections of this policy are based upon the materials produced by the Law Society of Upper Canada's *Justicia Project*. Permission to adapt the materials is gratefully acknowledged.

³ Context attributed to the guides published by the Law Society of Upper Canada in its *Justicia* materials.

⁴ *Employment Standards Act Regulation*, B.C. Reg. 396/95, s.31(c).

⁵ *Employment Standards Act*, R.S.B.C. 1996 c. 113 at sections 50(3) and 51(2).

⁶ A detailed review of this topic is beyond the scope of this policy, but law firms should familiarize themselves with these legal requirements. Law firms should also consider involving firm members or other lawyers with expertise in employment and human rights matters in drafting firm pregnancy and parental leave policies. The Law Society of British Columbia *Code of Professional Conduct* places a special responsibility on lawyers not to discriminate against any person.

POLICY

1. Statement of Principles

1.1. Commitment of the Firm

[Name of firm] understands that new parents may wish to spend an extended period of time with newborn or newly adopted children. In recognition of the physical impact of pregnancy and childbirth on birth mothers, the policy provides for periods of paid and unpaid pregnancy leave. The policy also provides for periods of paid and unpaid parental leave that are available to parents other than the birth mother upon the birth or adoption of a child in recognition of the time necessary to adjust to the demands of having a new child in the home.

This policy applies to all equity partners or lawyers in similar arrangements as equity partners in a law firm, collectively referred to in this policy as "partners".

1.2. Purpose

Policies to support women during their childbearing years and to assist women and men in balancing the demands of their career and family responsibilities provide long-term benefits for law firms, and contribute to the promotion of equality, human dignity and respect. This policy also recognizes the role of the firm in assisting partners to support their practice prior to, during and after a leave, and the role of the partner who takes a leave in ensuring continued excellence in client service and practice management.⁷

2. Pregnancy Leave

2.1. Eligibility

The pregnancy leave portion of this policy is applicable to partners who are pregnant or have given birth.

Every such partner is eligible for pregnancy leave for the length of time described in Section 2.2.

Every such partner is eligible for the paid pregnancy leave described in Section 2.3.⁸

2.2. Length and Timing

An eligible partner is entitled to a period of pregnancy leave, whether paid or unpaid, of up to _____ continuous weeks. Pregnancy leave may commence as early as eight weeks before the expected date of birth and as late as the actual birth date.⁹ Pregnancy-related illnesses requiring

⁷ See Law Society of Upper Canada's *Justicia Guide to Assist Law Firms in Developing Pregnancy and Parental Leave Policies for Partners*, January 2010, page 14.

⁸ A firm may choose to require a partner to be at the firm for a period of time before being entitled to paid pregnancy leave or require a partner to return to "active" practice for a particular period of time before a subsequent paid pregnancy leave may be taken.

⁹ The recommended timing for the commencement of paid maternity leave is the same as the timing for pregnancy leave benefits under the *Employment Insurance Act*.

absence from work prior to and after the pregnancy leave period are not covered by this policy. Partners should refer to applicable firm sick-leave policies and disability benefit plans.¹⁰

2.3. Remuneration for Partners Eligible for Paid Pregnancy Leave

An eligible partner is entitled to _____ weeks of paid pregnancy leave (the balance, if any, to be taken as unpaid pregnancy leave).

A partner on paid pregnancy leave is entitled to receive, during the period provided for in this Section 2.3, ____% of her [monthly draw, bonus and profit-sharing entitlement and share of profit allocation]¹¹ for the period (the "Pregnancy Benefit").

2.4. Benefits

The firm will maintain all benefits for a partner on pregnancy leave in accordance with its usual practice for all partners, throughout the entire period of the pregnancy leave, whether paid or unpaid.¹²

2.5. Reimbursement

A partner who has taken paid pregnancy leave is expected to return to work at the firm for a period of not less than _____ months following her return from leave.

If a partner who has taken a paid pregnancy leave does not return to work at the firm for that period, that partner must repay ____% of the Pregnancy Benefit she received during the period of paid pregnancy leave.

3. Parental Leave

3.1. Eligibility

The parental leave portion of this policy is applicable to partners with newborns or newly adopted children who have not taken pregnancy leave.

Every such partner is eligible for parental leave for the length of time described in Section 3.2.

Every such partner is eligible to receive the remuneration described in Section 3.3.¹³

¹⁰ Law firms should examine their disability benefit plans to ensure they are in accordance with the Supreme Court of Canada decision in *Brooks, Allan & Dixon v. Canada Safeway* (1989), 59 DLR (4th) 321, which held that disability insurance plans that exclude pregnancy-related illness from coverage contravene human rights protections against sex discrimination.

¹¹ Law firms need to carefully consider their compensation arrangements for partners and be clear on the entitlement of a partner on leave for each category of compensation.

¹² The *Employment Standards Act* contains express rules about the continuation of benefits during pregnancy leave; however, lawyers are exempt from that statute. This model policy recommends that firms treat pregnancy leave as they would other types of leave for purposes of benefits.

¹³ A law firm may choose to require a partner to be at the firm for a period of time before being entitled to paid parental leave.

3.2. Length and timing

The maximum cumulative period of parental leave, including paid and unpaid leave, for a partner who is the primary caregiver of a newborn or newly adopted child is _____ continuous weeks.

The maximum cumulative period of parental leave, including paid and unpaid leave, for a partner who is not the primary caregiver of a newborn or newly adopted child is _____ continuous weeks.

Where an eligible partner is either:

- (a) the primary caregiver of a newborn or newly adopted child, he or she is entitled to a period of paid parental leave of up to _____ continuous weeks¹⁴ following the arrival of the child in the partner's home; or
- (b) not the primary caregiver of a newborn or newly adopted child, he or she is entitled to a period of paid parental leave of up to _____ continuous weeks within the first year following the birth or adoption of a child.

Where paid parental leave has been taken, unpaid parental leave is to commence immediately following the paid parental leave unless the firm and the partner agree to a different schedule. In any event, parental leave (whether paid or unpaid) is to be completed within 52 weeks of the child's arrival in the home.

3.3. Remuneration

A partner on paid parental leave is entitled to receive, during the period provided for in Section 3.2, ___% of his or her [monthly draw, bonus and profit-sharing entitlement and share of profit allocation]¹⁵ for the period (the "Parental Benefit").

3.4. Benefits

The firm will maintain all benefits for a partner on parental leave, in accordance with its usual practice for partners, throughout the entire period of the parental leave, whether paid or unpaid.¹⁶

3.5. Reimbursement

A partner who has taken paid parental leave is expected to return to work at the firm for a period of not less than ___months following his or her return from leave.

¹⁴ The amount of time that a firm chooses to offer as paid time is to be determined by the firm. This model policy recommends that the primary caregiver of a newly adopted child be eligible to receive the same overall amount of paid leave time as would be available to a birth parent.

¹⁵ See note 10.

¹⁶ The *Employment Standards Act* contains express rules about the continuation of benefits during parental leave; however, lawyers are exempt from that statute. This model policy recommends that firms treat parental leave as they would other types of leave for purposes of benefits.

If a partner who has taken a paid parental leave does not return to work at the firm for that period, that partner must repay ____% of the Parental Benefit he or she received during the period of paid parental leave.

4. Consequences of Leave

A partner's targets for hours recorded and fees billed will be reduced to reflect the number of weeks of pregnancy or parental leave taken.

Compensation levels for partners who have taken a pregnancy or parental leave may or may not be affected, depending on the length of the leave and its impact on the partner's overall contribution to the firm. This will be discussed between _____ [insert appropriate position e.g. Managing Partner] and the partner prior to the start of the leave, and upon his or her return from the leave.¹⁷

5. Notice and Approval Procedures

5.1. Notice and Confirmation

Except in the case of a medical emergency or adoption when its timing is unexpected, a partner must notify the firm, in writing, in advance of his or her intention to take a leave for which he or she is eligible. The notice should specify the approximate starting date of the leave and the estimated date of return and should be submitted to [insert appropriate position e.g. Managing Partner] as soon as possible and not less than _____ months prior to the leave period.

The firm will promptly confirm the terms of the leave.

5.2. Approval of Excess Leave

Leave requests in excess of the policy period will be subject to the approval of [insert appropriate position e.g. Managing Partner].

The criteria for approval will include the needs of the requesting partner, workload, specific client needs, the unique skills of the requesting partner and time for proper planning to meet the demands of the practice.

6. Transitional Procedures

6.1. Transition or Support Plan

After notice of intention to take a leave has been submitted by a partner pursuant to Section 5.1, that partner will, as soon as reasonably possible, provide a written plan to [insert appropriate position e.g. Managing Partner] which addresses the following matters:

¹⁷ A firm may consider inserting a provision in its policy to provide that a pregnancy or parental leave of a specified duration should not, in the normal course, have any impact on the compensation of the partner for the fiscal year in which the leave was taken, particularly if the firm would continue to pay a partner his or her usual compensation during a similarly limited period of leave occasioned by illness, accident or bereavement.

- (a) transfer of responsibility for client files including, for each file, to whom the responsibility for the file will be transferred, the timing of the transfer, any transfer memos or meetings required, the form of notification to the client and others involved in the file, and the resumption of responsibility for those files when the partner returns from leave;
- (b) transfer of administrative, client management, marketing or other non-billable responsibilities of the partner, and resumption of those responsibilities when the partner returns from leave;
- (c) the partner's intentions and expectations regarding continuation of any duties or responsibilities while on leave, such as the availability of the partner for consultation on client files, client management and marketing, and continued participation in firm committees or other administrative work;
- (d) practice support including the acquisition of work and the maintenance and growth of his or her practice before and after return from leave;
- (e) social and other contact with the firm while on leave (e.g. involvement in firm or client events, practice group meetings, committee meetings and educational seminars);
- (f) administrative issues such as mode of communication with the firm, remote access to the firm computer system, mobile device usage, e-mail and voice mail access and notification, any administrative support, and any office space required while on leave;
- (g) any accommodation anticipated to be required both before and after return from leave (e.g. room for breastfeeding); and
- (h) notification to the firm/colleagues regarding some or all of the above issues.

7. Legislation

7.1. Applicable Legislation

This policy will be deemed to incorporate any changes required to comply with applicable legislation from time to time. It will be updated to reflect such changes as soon as practicable.