

# Practice Resource

## PREGNANCY AND PARENTAL LEAVE MODEL POLICIES FREQUENTLY ASKED QUESTIONS

1. What is the difference between pregnancy and parental leave, and why do the Model Policies deal with them differently?

Pregnancy leave applies only to lawyers who are pregnant or have given birth (ie. birth mothers). Parental leave applies to birth fathers and adopting parents. A similar distinction in leave entitlements is made in the provincial *Employment Standards Act*, R.S.B.C. 1996, c.113 (“ESA”) and in the federal *Employment Insurance Act*, S.C. 1996, c. 23 for benefits except that in those enactments leave benefits for birth mothers are divided between pregnancy and parental leaves; in the Model Policies, for ease of application, all of a birth mother’s leave entitlements are included under the rubric of pregnancy leave. The ESA does not apply to lawyers, but it provides a context and guidelines that are broadly understood and accepted. The Model Policies provide for both pregnancy and parental leaves, both to be of durations and with compensation benefits to be determined by individual firms.

2. Why is there one Model Policy for associates (and other lawyers in an employee relationship) and a separate Model Policy for partners?

The Model Policies address matters of compensation and advancement which, at the partnership level, are generally matters shared only with partners. Issues of file transition and responsibilities are also handled a little differently.

3. Why are Articled Students not included in the Model Policies?

Articling students are fixed term employees and are therefore typically entitled to different benefits from lawyers.

4. How do these Model Policies compare to the recommendations made by the Justicia Project of the Law Society of Upper Canada (the “LSUC Justicia Project”)?

Our Justicia Project (i.e. which was launched by the Law Society of British Columbia) formed several committees to consider issues pertaining to:

- pregnancy and parental leave;
- flexible work arrangements;
- collecting demographic data;
- fostering women’s networking and business development;

- promoting leadership skills for women; and
- developing path to partnership initiatives.

The Pregnancy and Parental Leave Committee reviewed the materials and guidelines published by the LSUC Justicia Project and has broadly endorsed them. While comprehensive, the LSUC materials are only guidelines. Our work has been to add to those materials by providing policy templates that could be adopted by individual law firms with minimal changes.

5. How do these Model Policies contribute to the mandate of the LSBC to support the retention and advancement of women in the legal profession?

Supporting lawyers during pregnancy and parental leaves is a recognized component of the retention and advancement of women lawyers. The Model Policies:

- endorse pregnancy and parental leaves as positive practices;
- provide clear and transparent processes that can be applied objectively to all lawyers; and
- communicate a firm's commitment to advancing inclusiveness and diversity at the firm.

6. What changes were made to the original model policy which was adopted by the LSBC in December 2006?

The 2006 policy has been separated into a policy for salaried lawyers and one for equity partners. In addition, provisions have been added to reflect best practices, that deal with reimbursement of compensation benefits in certain circumstances, that discuss the consequences of a leave, and that more fully describe transition arrangements. The data from survey firms was also updated.

7. Why should law firms financially compensate lawyers who choose to take pregnancy or parental leave?

Law firms have different cultures and financial structures. Compensation decisions are driven by the market, and many law firms do provide some form of compensation during these leaves (e.g. see the results from the 2013 survey which are foot noted in the Model Policies). Decisions to support lawyers on leave are investments in lawyer retention. In this regard it is instructive to consider the Business Case for Retaining and Advancing Women Lawyers in Private Practice (LSBC, July 2009) which had this to say:

“Given the demographics of the legal profession in BC, and the fact that law firms will continue to need to compete for talent, law firms need to seek and maintain advantages in the competition for talent and for clients. Law firms that fail to engage women lawyers and fail to prevent their departure in disproportionate numbers will be less able to

compete against those that do succeed in retaining and advancing women lawyers. Law firms cannot continue to lose talent and incur the costs of lawyer turnover. Keeping and developing talent increases efficiency, client service, lawyer morale and future recruitment ability. The rewards are measured not only through increased profits but also through the development of a stronger and more sustainable firm culture based on merit, flexibility and diversity.”

8. To what kind of leave are adoptive parents entitled?

Adoptive parents are entitled to the parental leave benefits in these Model Policies which include a longer leave for an adoptive parent who is the primary caregiver. The Model Policies treat adoptive parents on the same footing as birth parents.